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IN THE

Supreme Court of the United States

October Term, 1955

No. 281

UNITED STATES OF AMERICA,
Petitioner,

v.

JOSEPH P. RYAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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UNITED STATES OF AMERICA,

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against

JOSEPH P. RYAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Question Presented

Whether respondent, who was not the statutory employee "representative" under the terms of the National Labor Relations Act but merely an officer of the labor organization occupying that status, was a "representative" of employees within the meaning of Section 302 of the Labor Management Relations Act.

Statute Involved

Section 302 of the Labor Management Relations Act
(29 U. S. C. Section 186)

"*Restrictions on payments to employee representatives*

"a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money

or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* that (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of

employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

"d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"e) The district courts of the United States and the United States courts of the Territories and pos-

sessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled 'an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., title 29, secs. 101-115).

"f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

"g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."

Section 501 of the Labor Management Relations Act
(29 U. S. C. Section 142)

"(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

Statement

Respondent, until his retirement in November, 1953, was president of the International Longshoremen's Association (hereinafter sometimes referred to as the "ILA"), an international labor organization representing longshoremen and related classifications of labor on the waterfront of the Port of New York and in other ports throughout the nation. It has been stipulated that the ILA and its subdivisions were the recognized bargaining agents of longshore employees (R. 23).

As bargaining representative of waterfront workers, the ILA, not respondent, negotiated and entered into collective bargaining agreements with the various employers in the longshore industry, both in that Port and elsewhere.

In all cases the ILA itself, not the respondent, was the party to the collective bargaining agreements on behalf of the employees. No individual was a party to any collective bargaining agreement governing waterfront employment in the Port of New York except such individuals as might have been employers of labor. Under the ILA Constitution (Govt. Ex. 1A and 1B), the function of collective bargaining is vested exclusively in the Union, through its Wage Scale Committee, not in its President, and the bargaining was in fact conducted by the Wage Scale Committee, not respondent (R. 23, 24).

Within the past few years the ILA has won for its members both a welfare plan and a pension plan. Each plan provides for the establishment of a trust fund to be financed solely by employer contributions. Each plan is jointly administered by trustees selected by the ILA and the employers. Each plan is in writing and complies with Section 302 of the Labor Management Relations Act (Def. Ex. A, B, and C).

As in the case of the collective bargaining agreements, the welfare and pension plans have been entered into not by respondent, but by the ILA itself as the representative of the employees covered thereunder. There is no welfare or pension plan covering waterfront employees to which an individual is a party on behalf of the employees. In each case the employees' representative is a labor organization.

By the same token, the trustees, administering these funds, other than those selected by the employers, were appointed by the ILA, not by respondent or any individual, and are called "Union Trustees". In fact; under the terms of the written agreements themselves, this power of appointment belongs to the Union.

As Judge Palmieri pointed out at the conclusion of the trial herein (R. 142), respondent's receipt of money from James C. Kennedy was entirely open and devoid of any elements of surreptitiousness. His name was taken from a Christmas list in the Kennedy office and typed on an envelope by a stenographer working in an open room. The envelope containing the money was given to respondent in his business office by Kennedy who first announced himself to the Union's receptionist and then passed through a public waiting room.

There is thus evidence that the giving of money, from the point of view of the donor, was occasioned by the Christmas season, but there was no testimony as to the purpose of the gift by Kennedy or its receipt by respondent. No evidence exists as to whether the moneys were personal gifts to respondent destined for his own use or contributions to some cause in which he was interested.

In reviewing the evidence, the trial judge stated that "this record is completely barren of any proof or implication that the defendant received any money for a corrupt purpose or for the purpose of influencing a judgment

in any manner" (R. 141). He concluded his analysis as follows: "So far as I can see from this record there is not a single element of proof or a single implication indicating that the defendant was sought to be corrupted or was in fact corrupted, or that the bargaining power of the employees he represented as president of this International Longshoremen's Association was in any way impaired or diminished" (R. 143-144).

Despite this clear record, the Government in its brief seeks to create the contrary impression by repeatedly describing respondent's receipt of money as a "payment," a term connoting a *quid pro quo* from respondent to the giver of the money. This is contrary not only to the evidence in the record but to the express finding of the trial judge. Improper employer influences destroying the "integrity of collective bargaining," to which petitioner refers so often, are no part of the facts of this case.

The trial judge's decision rested on the theory, urged by the Government (R. 145), that the statute was *malum prohibitum*. The Court of Appeals agreed that there was no evidence of corruption, but found it unnecessary to consider whether intent or purpose was an element of the crime. The Court based its reversal of the conviction on the ground that the term "representative of employees" in Section 302 of the LMRA did not refer to a union officer when the Union itself occupied that status, a status made "exclusive" by the provisions of Title II of the LMRA, the National Labor Relations Act.

Summary of Argument

I. The word "representative", as used throughout the Labor Management Relations Act, is defined in Section 501(3) of that Act in terms of its "meaning when used" in the amended NLRA. "Representative" is used with refer-

ence to a "representative of employees" 25 separate times in 16 distinct provisions of the amended NLRA. Each and every time, the term refers not to a union official, but to the labor organization or individual selected by a majority of the employees in an appropriate bargaining unit as their exclusive representative for purposes of collective bargaining. There are no exceptions to this uniform use of the term.

In the case at bar, the exclusive representative of the longshore employees in New York was a labor organization, the International Longshoremen's Association, and not respondent. Consequently under the express definition in Section 501(3) of the LMRA, the provisions of Section 302(b) apply not to respondent but to the ILA.

That the term "representative of employees" should have this meaning in the LMRA is understandable in light of the purposes and structure of the Act. For under this statute, employees, and employees only, are grouped into appropriate bargaining units with the representative chosen by the majority being endowed with federally protected rights and subjected to federally imposed duties and liabilities. The free choice of employee representatives, guaranteed to employees under the LMRA, is applicable solely to the exclusive bargaining representative; and the election procedures established under the Act to insure this free choice extend only to the statutory "representative of employees." These procedures in no wise apply to union officers; and no federal control is provided over the selection of union officers who may or may not be the choice of the employees in any given bargaining unit.

Where Congress, in the LMRA, intended to refer to union officers, it used a clearly applicable term such as "officers" [NLRA Section 9(h)] or "agents" [NLRA Section 8(b), LMRA Section 301(b)]. And where Congress intended both a labor organization and its officers to be

covered by a statutory provision, it used an appropriate, explicit phrase like "a labor organization or its agents" [NLRA Section 8(b)]. The use in Section 302 of the word "representative," with its well-defined meaning in other sections of the same Act, must be deemed meaningful and purposeful.

Section 302 itself confirms the correctness of the construction adopted by the Court of Appeals. Intended as a limitation on the area of permissible collective bargaining, the Section commences with an absolute ban on all transfers of money from employer to employee representative, thereby prohibiting the parties to collective bargaining from agreeing on such transfers. Welfare funds and check-offs were prominent examples in 1947 of the type of transfer Congress intended to regulate; guaranteed annual wage funds are a notable recent example. The ban being absolute, Congress then had to exempt therefrom all transfers deemed by it to be proper, and this was done through the five exceptions in Section 302(c). Since a statutory "representative" could be either a labor organization or an individual, the exceptions had to be applicable to both, so that the employees' selection of representative, which was intended to be free and unlimited under the NLRA, would not be limited by the restrictions in this Section.

The most important exception in Section 302(c) deals with welfare and pension funds "established by such representative." In the case at bar, the welfare and pension funds have been established by the ILA, not by respondent. Such funds are invariably established by the statutory representative in its collective bargaining, and not by any particular union officer.

Section 302 likewise shows that the Congressional purpose was not to eliminate corrupt or surreptitious transactions between employer and union officer, as petitioner claims. For subdivision (f) of that Section permits an

otherwise illegal agreement made prior to the enactment of the statute to be performed for one year thereafter. Such a provision would be unthinkable in a statute designed to stamp out corruption, bribes, and "sell-outs"; its inclusion in Section 302 demonstrates unmistakably that the legislative aim was something else altogether.

If the Government's argument were adopted by this Court, chaos would be introduced into labor relations. Employers, under Section 302 as so construed, would be authorized to establish welfare and pension funds with minority unions, or even individual union officers, and to effectuate check-offs with such minority unions. And if the statutory election procedures governing "representatives of employees" are to be deemed applicable to union officers, then impeachment of union officers and review of union elections through the NLRB would be only two of the astonishing consequences.

II. Legislative history confirms the correctness of the decision below. Virtually the entire Congressional consideration of Section 302 was devoted to welfare funds and their regulation. Congress indicated clear awareness that such funds were created through payments to labor organizations, and not to their officers. No evidence exists that Congress' purpose was to "eradicate improper employer influences" and hence strengthen union bargaining power, as petitioner claims. On the contrary, such a purpose would be inconsistent with the entire policy of Taft-Hartley which was to correct an asserted lack of balance in the original NLRA by limiting the power of unions, imposing new liabilities upon them and removing certain restrictions from employers in their industrial relations.

Throughout its entire history in the Taft-Hartley bill, Section 302 contained a separate definition of "representative," at variance with the meaning of that term in the NLRA. This definition may well have covered union offi-

cers. Key Senators of the majority party protested that the definition was too broad in that it would nullify basic provisions of the NLRA and punish innocent conduct on the part of union officers. Thereafter the Joint Conference Committee eliminated the separate definition of "representative" and added that word to Section 501(3) as one of the statutory terms defined through its NLRA meaning.

As a result of the enactment of Section 302, welfare funds have been regulated and collective bargaining limited in the manner desired by Congress; and this has been accomplished without any attempt to extend the statutory coverage to union officers.

III. The Government's broad and sweeping contention herein would have the further result of ousting the states completely from their traditional jurisdiction over extortion by and bribery of union officials or creating a federal crime duplicating a state crime and enabling both federal and state penalties to be imposed for the same act. In addition, adoption of the Government's contention would permit conviction under two federal acts, the Hobbs Act and the Taft-Hartley Act, for precisely the same conduct.

IV. A statute should be construed, if possible, to avoid serious Constitutional questions. Accordingly, the decision below should be affirmed, for to construe Section 302 as the Government urges would result in its invalidity.

Section 302, as construed by the Government would be void for vagueness in that it would supply no ascertainable standard governing the meaning of "representative"; the average citizen would not be given fair notice as to which persons are subject to the statutory coverage. Particularly is this so when, under the Government construction, the term "representative of employees" in Section 302 would have a different and broader meaning than in all other provisions of the LMRA.

In addition Section 302, as so construed, would be invalid both on its face and as applied in that it would be beyond Congress' power to enact. A receipt of money by a private individual would be prohibited solely because he occupied a certain industrial or economic status, but no link would be required between that status and the act to be made criminal. To prohibit an act which might spring from a private, personal, social, political, fraternal, or religious relationship between two persons, solely because they also may occupy a certain economic relationship, far exceeds Congressional power to regulate interstate commerce.

ARGUMENT

POINT I

Respondent was not a "representative of employees" within the meaning of Section 302 of the Labor Management Relations Act. The sole and exclusive representative of waterfront employees, including those employed by Daniels & Kennedy, Inc. and J. Arthur Kennedy & Son, Inc., was the International Longshoremen's Association, a labor organization, together with its Atlantic Coast District and affiliated locals, also labor organizations.

The word "representative" as used in Section 302 of the LMRA is defined in that statute. Section 501(3) of the LMRA (29 U. S. C. Section 142) defines that term for Section 302 and for all other sections of the Act. It provides as follows:

> "(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this act."

In this Point we shall show the meaning of "representative" throughout the amended NLRA in accordance with this section of definitions. We shall do this through an analysis of the statutory scheme and structure and an examination of the use of "representative" in each of the provisions of the NLRA in which it is found. We shall do the same with the remainder of the LMRA, and particularly Section 302 itself. An examination of this statute will disclose that the word "representative" as defined and used therein has a clear and consistent meaning throughout the entire Act, and is used in the same way throughout.

As the Court below noted, the term "representative", with reference to a "representative of any employees" "invariably . . . means a 'representative' selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative" (R. 173). The word "invariably" is an apt one; there are no exceptions. The status of employee representative is created and recognized by this very statute which endows the possessors of that status with a series of rights, powers, duties, and liabilities. Moreover, it is clear that this is the only meaning possessed by the word "representative" with reference to a "representative of employees" and that such a "representative", within the meaning of the amended NLRA and each use of the term therein, cannot and does not cover a union official. In the case at bar the statutory "representative of employees" is the International Longshoremen's Association, not respondent.

A. The Statutory Scheme of the LMRA Establishes That Respondent Was Not a "Representative" of Employees Within the Meaning of the Act.

The bulk of the LMRA, popularly known as the Taft-Hartley Act, is an amended version of the National Labor Relations Act, the old Wagner Act which was originally adopted in 1935. This amended NLRA comprises sub-

chapter II of the LMRA, Sections 151 through 168 of the Code. The remainder of the LMRA is entirely new matter added at the time of the statute's adoption in 1947. Section 302 is contained in this latter group of largely miscellaneous provisions.

It is necessary to understand the statutory scheme of the entire Labor Management Relations Act in order properly to construe and apply the term "representative," as used in Section 302, because the statutory definition of that term acquires meaning only in the context of the entire Act. It is particularly necessary to ascertain how the term is used in the amended NLRA, although Section 302 is itself in another subchapter of the LMRA, because, as we have shown above, Section 501(3), the general provision on definitions in the LMRA, expressly directs that the meaning of the term is to be found in that portion of the LMRA embraced within the NLRA. Section 501, like Section 302, is not a part of the NLRA and the definitions contained therein govern the use of the various terms defined wherever they appear anywhere in the LMRA, including Section 302.

Obeying the statutory command in Section 501 and turning to the amended NLRA for the meaning of the word "representative," we find that Section 2 of the NLRA entitled "Definitions," provides that when used in that Act:

> "(4) The term 'representatives' includes any individual or labor organization."

The oft-repeated argument in the Government's brief that this provision brings union officers within the statutory meaning of "representative" is wholly without merit. Obviously not all individuals or labor organizations in this nation are "representatives", and the NLRA definition, by using the verb "includes", does not purport to embrace

all such persons or bodies within its scope. Nor does Section 501 of the Taft-Hartley Act refer to Section 2 of the NLRA or to any NLRA "definition" of the key term, as could easily have been done, but rather to the "meaning when used" in the amended NLRA. In the words of the opinion below, "We thereby learn [from Section 2(4)] what 'representative' *includes*. To understand what it *means* . . . we must . . . turn to the many sections of the amended NLRA where 'representative' is so used." (Emphasis supplied) (R. 173).

An examination of the substantive provisions of the NLRA makes clear that the "individual" referred to in Section 2(4) as a possible "representative" is not a union official but an individual acting as representative of the employees in a unit in lieu of a labor organization. Thus Section 8(d) of the NLRA provides:

> "The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3) and (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the *labor organization or individual*, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees . . ." (Emphasis supplied.)

And Section 9(c)(1) provides:

> "Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the *individual or labor*

> *organization*, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or
>
> (B) by an employer, alleging that one or more *individuals or labor organizations* have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section; . . ." (Emphasis supplied.)

The plain language of these sections shows that the "individual or labor organization" described as a "representative" or former "representative" is the collective bargaining agent alone and not any of its officers. And the use of precisely the same phrase, "individual or labor organization", in Section 2(4) means that the same concept was intended to be conveyed by the identical words in that section.

Not only does Section 2(4) of the NLRA refute the Government's contention, but Section 501(3) of the LMRA pointedly fails to refer to that section and speaks instead of the "meaning . . . when used" in the amended NLRA. To ascertain that meaning, it is necessary to examine the entire NLRA.

At the outset of the NLRA in Section 1 (Section 151 of the Code), Congress expounds the basic policy that the free flow of commerce is burdened and obstructed by the denial to employees of the right to organize and bargain collectively. To permit the process of collective bargaining to function in an atmosphere of relative equality between employers and employees and without impairment through improper practices by either employers or labor organizations, the elimination of such practices is declared to be essential.

Throughout the Act, as in the initial statement of "Findings and Policies" it is emphasized that commerce flows freely and unobstructed when employees are encouraged and enabled to organize, designate representatives of their own choosing, and bargain collectively through those representatives.

For the purpose of selecting representatives, the Act conceives of employees as being grouped into "appropriate units". These units may be composed of all employees of a given employer, all employees in a particular plant, or merely all those in a particular craft or subdivision of a plant (NLRA Section 9). Thus, in a particular plant there may be only one unit and hence a single representative for all employees, or several appropriate units, each with its own representative. Similarly the business of a single employer may call for one bargaining unit or several, depending upon its nature and the industrial facts. In some instances, as in the case at bar, the "employer unit" actually covers a group of employers, all of whom may hire a pool of employees interchangeably.

Under the Act, there can be only one representative of the employees in a particular unit, that representative being the exclusive bargaining representative of the entire unit (NLRA Section 9(a)). This representative is chosen by the majority of the employees in the unit. In other words, the Act does not permit minority groups in a unit to bargain collectively through a "representative" chosen by them. The sole and exclusive representative, within the meaning of the Act, is the one selected by the majority. The employer must bargain collectively with the representative of the majority alone, and the collective agreement between such representative and the employer governs the terms and conditions of employment of all workers in the unit, those who have chosen the representative and those who would have preferred another. *American Communications Association* v. *Douds*, 339 U. S. 382, 400 (1950).

The commencement of the collective bargaining relationship between an employer and the representative of his employees in a particular appropriate unit may occur in two different ways. The representative may simply make a demand for recognition as such upon the employer, and the employer, being satisfied that the party making the demand is in fact the chosen representative of a majority of the unit, may voluntarily accord recognition, commence bargaining, and enter into a collective agreement. In that case, the matter of ascertaining the representative of the employees and establishing the collective bargaining relationship is accomplished independently of the representation procedures set up in the Labor Management Relations Act.

On the other hand, when an employer is faced with a demand for recognition and to commence bargaining, he may not be convinced that the party making it is in fact the representative of the majority in the unit. Or he may feel that the unit described in the demand is inappropriate. And in some instances he may be faced with demands from two or more sources, each claiming to be the representative chosen by a majority of the unit.

To resolve the question of representation, procedures are established in the Labor Management Relations Act, specifically in Section 9 of the NLRA. There it is provided that employers, employees, or employee representatives may file petitions with the National Labor Relations Board. The Board then holds hearings to determine the appropriate unit. If it in fact appears that a question of representation exists, then the Board conducts a secret election among the employees in the unit found to be appropriate. In that election the employees are given the opportunity to choose among the contenders for the position of representative or to reject all of them. If one of the contenders is chosen, then that party is certified by the National Labor Relations Board as the representative of the employees,

and the employer is obligated to bargain collectively with such representative.

Provision is also made for decertification elections upon a petition alleging that a party which has been certified or is currently recognized as the representative is no longer the representative desired by the majority (Section 9(c)(1)).

The evidence in the case at bar establishes that the ILA until 1953, and during the period in question, was the recognized and unchallenged representative of the longshore employees in the Port of New York (R. 117-118). The only challenge during this period, which related solely to tractor drivers, was disposed of in a National Labor Relations Board proceeding, the outcome of which left the ILA as the recognized representative (R. 119-122). Since no NLRB election was required until 1953, and since the employers for decades have recognized the ILA as the representative of their longshore employees, no NLRB certification was necessary.

It is not our contention that only a representative certified as such by the NLRB is covered by Section 302. The NLRA clearly contemplates that representatives may acquire that status through selection by the employees in an appropriate bargaining unit and voluntary recognition as such by the employer. Definite rights and liabilities are given to such representatives. Many labor organizations, including the ILA prior to 1953, were never certified but have always acted as the designated and recognized representative of employees. As such they have the status of representatives under the NLRA and are subject to the restrictions of Section 302 of the LMRA.

We do contend that the stipulation of facts herein, in setting forth that the "ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized bargaining agents for longshore labor in the

Port of New York in 1950 and 1951" and entered into collective bargaining contracts with longshore employers (R. 23) has established that the ILA and its subdivisions were the representatives of longshore labor within the meaning of the NLRA, the term "bargaining agent" being simply a non-statutory term employed synonymously with the statutory term "representative"; and by reason of Section 501, the stipulated facts likewise establish that these labor organizations were the sole and exclusive representatives of employees within the meaning of Section 302.

Aside from the provisions dealing with the selection of employee representatives, the other principal provisions of the National Labor Relations Act are designed to protect the right of employees freely to organize and engage in concerted activities for their mutual aid or protection or to refrain from such activities (Section 7) and to prohibit certain unfair labor practices by employers and labor organizations (Section 8). These unfair labor practices are what Congress referred to in the "Findings and Policies" (NLRA Section 1) as being impediments and burdens to the flow of commerce, and their prohibition is intended to encourage and further the process of free collective bargaining. In addition Section 8 also contains a provision, paragraph (d), which imposes affirmative duties on the employer and the representative of employees in their collective bargaining.

The remainder of the Labor Management Relations Act, apart from the NLRA, deals generally with machinery established for conciliation of labor disputes, with procedures enabling temporary injunctions to be granted in national emergency strikes, and with certain miscellaneous provisions. The latter deal with the suitability of labor organizations, secondary boycotts, restrictions on political contributions, strikes by government employees, and, in

Section 302, restrictions on payments to employee representatives. Under this latter provision the instant indictment is laid.

As we have seen, the NLRA defines the word "representative" as including both labor organizations and individuals. It is undoubtedly because of the fact that a representative of employees, under the Act, *can* be an individual that the misconception has arisen leading to this prosecution of an officer of a labor organization. But the statute itself makes it perfectly clear that where a union is the representative of employees, no individual, including an officer or agent of the Union, is an employee representative, within the meaning of the Act. The Union itself is the representative; its officers and agents are in fact specifically referred to in the statute in terms which preclude any confusion between their identity and status and that of the representative itself.

A "representative of employees" thus may be either a labor organization or an individual. These two possibilities are alternatives, however, and do not both exist in the same unit of employees.

In practice the majority of employee units in which representatives have been selected are represented by labor organizations rather than individuals. It is, however, entirely permissible for a unit of employees to select an individual or even a group of individuals as their representative, and this does occur. In such an instance the individual selected would have all the statutory rights and duties of a representative, would negotiate and enter into collective bargaining agreements in his own name, and as an individual would be subject to both certification and decertification proceedings. As was testified to by the clerk of the NLRB in this case, an individual may be elected by the employees in a unit and is then certified as the representa-

tive by the NLRB on its official certification forms (R. 131-140).

Bringing the matter closer to home, choice of an individual as representative would mean that the welfare and pension funds referred to in Section 302 would be entered into by the individual in his own name as the employee representative, and any arbitration or court proceedings, also referred to in that section, would be conducted by him in his own name.

It cannot be disputed that the longshoremen in the Port of New York have not adopted this expedient of selecting an individual as their representative. They, like the majority of organized employees in this country, have chosen to be represented by a labor organization, in their case, the International Longshoremen's Association.

Thus collective bargaining agreements are negotiated and entered into by the employers and the Union, not any individual; grievance and arbitration proceedings are between the employers and the Union, not any individual, and finally, the welfare and pension funds for longshoremen which are described in Section 302(c) as being "established by such representative" have been established by the employer and the Union, not any individual.

An examination of each of the uses of the word "representative" in the LMRA shows that it is impossible to construe that term, as used in Section 302, so as to include officers of a labor organization, when the facts show, as here, that it is the Union itself which is the representative for all purposes, that all the incidents and steps in the collective bargaining process are taken by and in the name of the Union, and that the officers merely act as agents for the Union just as do officers and agents of any corporation or unincorporated association. Particularly in those provisions actually dealing with the selection of representa-

tives and representation proceedings, the special status accorded a "representative" under the Act and the restricted applicability of that term to the labor organization or, alternatively, the individual selected as such, and not to any union officer or agent, is made crystal clear.

B. The Word "Representative" as Used in the LMRA, Is a Statutory Term Referring to the Party Designated by the Employees in an Appropriate Unit as Their Bargaining Representative. The Uses of That Term Throughout the LMRA Establish That It Cannot be Constructed So as to Apply to Respondent Herein.

The "meaning [of 'representative'] as when used in the National Labor Relations Act as amended" appears from the many NLRA provisions in which the term is used. Since Section 501(3) makes that meaning applicable to Section 302, the key to this case is found in those NLRA provisions. Accordingly we shall now consider in turn each provision of the amended NLRA in which the term "representative" is used, in either its singular or plural form. As we shall show, each of the 25 times and in each of the 16 separate provisions that "representative" is used with reference to a "representative of employees," it has the meaning given it in the decision below.

The statutory text itself is set forth in the Addendum attached to this brief, each pertinent provision being numbered in the order in which it appears in the statute. In treating these sections below, we shall identify the discussion of each provision by preceding it with the number given that section in the Addendum hereto.

1.

NLRA Section 1; 29 U. S. C. Section 151.—The first use of the term "representative" is in Section 1 of the NLRA, Section 151 of the Code, where Congress enunciates the

national policy of protecting workers in the free designation of representatives of their own choosing for the purpose of negotiating labor agreements or other mutual aid or protection.

It is to be noted in this connection that the NLRA contains specific provisions to effectuate its aim of insuring the free choice of representatives by employees (Section 9). Procedures are established for the holding of representation elections conducted by the NLRB, a governmental agency created by the Act to assure to the employees in a given unit a full opportunity freely to select the representative they desire. In sharp contrast to this there is nothing in the NLRA or any other portion of the LMRA bearing upon the election of union officers and giving to members of a labor organization any free choice in the selection of the officers or agents of their union. If a labor organization denies to its members any opportunity to choose or elect the union officers the members are wholly remediless, insofar as the LMRA is concerned. Their only redress, within the framework of the Act, is to seek to decertify the labor organization with which they are dissatisfied and replace it with another representative.

In other words, the Act guarantees to employees the free choice of their statutory "representative" and provides means to effectuate this choice through NLRB representation elections. However, there is nothing in the Act guaranteeing to any workers a free choice in the selection of the officers of their union and no means are provided to insure such a choice. Thus, at the outset, we have a clear indication that when Congress used the word "representative", it was not thinking of a union officer but rather of the union itself, and its reference to an "individual" in the definition of "representative" applies only to those individuals who serve as alternatives to labor organizations, functioning as representative in their individual capacity

and name, not as agents, and subject to the free choice of all employees in the unit through the representation proceedings described in the Act.

2.

NLRA Section 2; 29 U. S. C. Section 152.—The second use of the term "representative" is in Section 2 of the NLRA where it is defined. As indicated above this definition, taken in itself, is meaningless since obviously not all individuals or labor organizations in the nation were intended to be covered by the term. The true meaning of the term can be determined only in the context of the remainder of the Act. As shown above, the context in which these same words are used throughout the Act confirms the correctness of the construction adopted herein by the Court of Appeals.

3.

NLRA Section 7; 29 U. S. C. Section 157.—In Section 7 of the NLRA, employees are guaranteed the right "to bargain collectively through representatives of their own choosing." Here again, in the great majority of industries where a labor organization serves as collective bargaining agent for the employees, the reference is to the organization itself and not to any of its officers. Taking the case at bar as an example, it is the ILA, and not its officers, with whom the employers bargain collectively. The officers are merely the agents of the Union. These relationships can be seen from two simple facts.

In the first place, the collective bargaining agreements are made, on behalf of the employees, not by any individual but by the International Longshoremen's Association, a labor organization (R. 23). In the second place, the composition of the Wage Scale Conference Committee of the ILA varies from year to year, its members being selected in the main by the various locals in the ILA's Atlantic

Coast District (R. 23-24), but this in no wise affects the bargaining relationships or the collective agreements entered into. The principal always remained the same although it may have acted through different agents. No individual's presence was essential, since each was merely an agent of the bargaining representative and in no sense the representative itself.

Graphic illustration of this appears from the well-known fact that respondent resigned as president of the ILA in November, 1953 without in the slightest affecting the status of the Union or its collective bargaining relationship with the employers. No one would ever suggest that by virtue of the respondent's resignation as president, the ILA ceased to be representative of waterfront workers or that a representation election or certification from the NLRB would be necessary to establish the employees' representative upon such resignation. And yet such would be the case if respondent, rather than the labor organization of which he was an official, had been the representative of the longshoremen.

4.

NLRA Section 8(a)(3); 29 U. S. C. Section 158(a)(3).— Section 8(a)(3) of the NLRA provides one of the clearest demonstrations of the fallacy of the Government's theory in this case. In that section, which prohbits various forms of contractual union security provisions but permits, in the form of a proviso, a union shop clause, the applicability of the proviso is specifically limited to instances where "such labor organization is the representative of the employees". It is hard to conceive of language establishing more forcefully that the term "representative" refers to the organization itself and not to its officers. Moreover, as if to emphasize the point, the word "representative" has been preceded by the article "the", thereby precluding any possible contention that in a unit where a labor organization is representative, there could be another representa-

tive as well. Any such construction would not only run afoul of the phrase "the representative", but would be wholly irreconcilable with the basic theory of the Act that the organization or individual chosen by the employees shall act as the exclusive representative.

That the ILA was recognized in the longshore industry as the exclusive representative of longshore employees within the meaning of the NLRA is further demonstrated by the collective bargaining agreements in evidence herein (Govt. Exs. 1C and 1D). Each of them grants to the ILA the type of union shop clause that is permitted by Section 8(a)(3) to be granted only to a representative of employees and each conditions the grant upon a certification from the NLRB, as was required under the NLRA at the time of the making of the two contracts.

5.

NLRA Section 8(a)(5); 29 U. S. C. Section 158(a)(5).—Subparagraph (5) of Section 8(a) makes it "an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees". Here again we wish to point out that it is the ILA and its subdivisions with which the employers bargain collectively and make written contracts, not any individual. The composition of the ILA's bargaining committee is in fact of no concern to the employers. For, as we have shown, the resignation of respondent as president of the ILA, or for that matter the resignation of any other officer or agent of the ILA or his failure to be selected on a Wage Scale Committee, would in no sense affect the obligation of the employers under Section 8(a)(5) of the Act to bargain with the ILA through whatever agents it may act.

6.

NLRA Section 8(b); 29 U. S. C. Section 158(b).—Paragraph (b) of Section 8 is of particular significance in determining the meaning of the term "representative" because,

in addition to using the word itself several times, it refers also to labor organizations and the agents of such organizations. The use of these various terms shows that when Congress intended to refer to the agents of a labor organization it knew how to do so in specific terms. And the context in which those various terms are used shows clearly that the term "representative" refers to the labor organization itself and not to its agents.

Thus, Section 8(b)(3) provides that:

> "it shall be an unfair labor practice for a *labor organization* or its agents . . . to refuse to bargain collectively with an employer provided *it* is the *representative* of his employees." (Emphasis supplied.)

In this sentence the italicized word "it" quite clearly refers back to the term "labor organization", and being singular in form cannot by any stretch of the imagination include both a labor organization and its agents. In other words, the statute makes it an unfair labor practice for a labor organization or its agents to refuse to bargain collectively provided the labor organization is the representative of the employees. By using the words "its agents", a term which clearly describes respondent in the case at bar, in the same sentence as the terms "representative" and "labor organization", and by using the term "representative" in that sentence to refer solely to a labor organization and not to its agents, the Act evidences a clear intent to include within the meaning of the term "representative" only the organization itself and not its agents.

7, 8, 9.

NLRA Section 8(b)(4); 29 U. S. C. Section 158(b)(4).— The same clear intent that appears from Section 8(b)(3) is shown in subdivision (4)(B) of Section 8(b). This section, which is essentially a prohibition against secondary boycotts, prohibits such boycotts where an object thereof is to

force an "employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees".

Again the Act refers to "the representative" of employees as being a labor organization and again we have the plainest expression of an intent to apply that term to the organization itself and to the organization exclusively. The fact that this paragraph is a part of Section 8(b) and is therefore preceded by the general reference to "a labor organization or its agents" is further indication that the term representative, having been made specifically and expressly applicable to a labor organization, does not apply to the agents of that organization.

The same is true with respect to Section 8(b)(4)(C) which also refers in two places to a labor organization as being "the representative" of employees.

Section 8(b)(4)(D) forbids a secondary boycott with the aim of forcing an employer to assign work to employees of a particular labor organization unless the employer is failing to conform to a certification of the Board determining the bargaining representative for employees performing such work. The significance of this use of the word "representative", in relation to the issue involved in this case, emerges from an examination of Section 9 of the NLRA which deals with National Labor Relations Board certifications and which will be considered below.

10.

NLRA Section 8(b)(4); 29 U. S. C. Section 158(b)(4).— The proviso to Section 8(b)(4) protects employees in their failure to enter upon the premises of an employer, if the employees of that employer are engaged in a strike approved by a representative of such employees whom the employer is required to recognize under the amended NLRA.

In other words, if a labor organization is the representative of employees in a unit and approves or ratifies a strike, then other persons are protected in failing to enter the premises of the struck employer.

The fallacy underlying the instant indictment is again revealed in this subsection. For it is clear that the proviso summarized above could have effects wholly beyond the intent or desire of Congress if approval or ratification by any officer or agent of the labor organization were sufficient to bring the strike within the coverage of the proviso. It is apparent that what is intended is a strike officially approved by the labor organization itself, as the representative of the employees, and not merely one of its officers.

11.

NLRA Section 8(d); 29 U. S. C. Section 158(d).—Section 8(d) deals with the duty to bargain collectively. This duty is defined as "the performance of the mutual obligation of the employer and the representative of the employees to meet" and confer concerning various terms and conditions of employment or the negotiation of an agreement and the execution of a written contract incorporating any agreement reached. It is thus apparent that here, too, in accordance with the scheme and structure of the Act, the parties to the collective agreement are viewed as the employer and the representative of the employees. These are the ones who are required by Section 8(d) to execute a written contract incorporating the collective bargaining agreement reached between them.

In the case at bar the written contracts which have been executed between the employer and the representative of the employees have been entered into on behalf of the employees by the International Longshoremen's Association and its subdivisions, not by any individual (R. 23). In such circumstances, no construction of the statute which

would attempt to make the word "representative" apply to an officer or agent of the labor organization is tenable.

Indeed a license to union officials and employers to make their own private agreements on terms and conditions of employment would destroy the integrity of collective bargaining more quickly and effectively than virtually anything else. Particularly would this be so if such an agreement could be made with an International President of a union, a stranger to a local bargaining unit, thus by-passing completely the duly selected employee representative.

12.

NLRA Section 8(d); 29 U. S. C. Section 158(d).—Section 8(d) is particularly helpful in demonstrating the meaning and application of the term "representative" in instances where it covers an individual rather than a labor organization. The structure of the section shows that when an individual is a representative, he is acting as an alternative to a labor organization, and in such event the individual has the same special status and group of rights and duties as has a labor organization in the more common situation.

Specifically Section 8(d) provides that the duties of collective bargaining devolving upon employers, employees and labor organizations upon the termination of a collective bargaining agreement shall become inapplicable upon a certification by the Board "under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees". Thus the individual contemplated by the Act as a possible representative of employees is one who enjoys the full status of collective bargaining agent in his individual capacity and who, as an individual, is actually a party to the collective bargaining agreement. Plainly such a contemplated state of facts is wholly alien to the

circumstances in the case at bar where no individual has ever been a party to a collective bargaining agreement on behalf of longshoremen or other waterfront workers but where, on the contrary, such collective bargaining agreements have always been made with a labor organization as the party representing the employees.

13.

NLRA Section 9(a); 29 U. S. C. Section 159(a).—Section 9 of the Act deals specifically with the question of representatives and representation proceedings. At the outset in paragraph (a) of that section the legislature enunciates the principle that the representative selected by the majority of the employees of the unit shall be the exclusive bargaining representative of the entire unit. Here, too, it is pertinent to note that in the case at bar collective bargaining is carried on by the ILA, not by any individual, and the collective bargaining agreements are entered into by the ILA and its subdivisions as employee representatives, and not by any individual officer or agent of the ILA. The concept of exclusivity of representation, basic to the entire scheme of the statute, precludes any possibility of respondent holding the same status.

Section 9(a) also contains a proviso permitting an individual employee to present grievances to his employer without the intervention of the bargaining representative provided that the bargaining representative has been given an opportunity to be present at such adjustment. Here, too, the scheme of the Act which contemplates a single collective bargaining representative acting on behalf of all employees in the unit, is made plain, as is the irreconcilable inconsistency between such scheme and any attempt to attach the status of representative to an officer of the ILA under the facts of this case.

14.

NLRA Section 9(b); 29 U. S. C. Section 159(b).—Section 9(b) provides that no labor organization shall be certified as the representative of employees in a bargaining unit of guards if it admits or is connected with an organization admitting to membership employees other than guards. Here is yet another provision containing specific language to the effect that a labor organization is itself the representative of employees within the meaning of the Act, rather than any officers or agents of that organization.

15.

NLRA Section 9(c)(1); 29 U. S. C. Section 159(c)(1).—Section 9(c)(1) provides the mechanics for initiating representation proceedings. As indicated above, it also serves further to clarify and amplify the statutory definition of representative, Section 2(4), and to make plain that when an individual is a representative, it is not because he is an officer of a labor organization but rather because he has been chosen as an alternative to a labor organization. As an individual, therefore, and in his own name he actually carries on collective bargaining and enters into collective bargaining agreements.

The pertinent portion of Section 9(c)(1) provides that a petition may be filed when an employer refuses to recognize the representative of the employees in a unit as the exclusive representative defined in Section 9(a), or when it is asserted:

> "that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section."

This section too would cause chaos in the national labor picture if the Government's view of the statute were

adopted and a union officer held to be a "representative". For under that interpretation a "group of employees" dissatisfied with their union officers or desirous of seeing them replaced by other candidates could, at any time during the term of office, petition the NLRB to have the incumbents removed from office and replaced by their rivals. A Board election would be a statutorily guaranteed method of impeaching union officers and changing their terms from those prescribed in the union Constitution to what would in effect be a term at the will of the majority of employees in the unit. Such a state of affairs is on its face absurd, yet it would be the result of petitioner's theory herein.

This illustrates another basic misconception underlying the Government's argument. Under the Taft-Hartley Act all employees in a particular unit have a guaranteed right to participate in the choice of representatives, and the party chosen as representative by the majority is accorded that status under the Act. The election of union officers, however, is confined to m abers of the Union and it is entirely common for union membership to be far less than co-extensive with membership in a given appropriate bargaining unit. In fact the union members in a unit may comprise only a small proportion of the entire group. A mere 51% of the employees in the unit, moreover, would give the union membership control over the determination of the bargaining representative even though all the non-union members participated in a representation election and voted against the union. And again assuming a maximum of opposition, a union officer may be elected by only 51% of the union membership or 26% of the employees in a unit.

And even this does not give the full picture of the difference between union elections for officers and NLRB elections for the representative of employees, since it assumes that the union election is held only among members in a single bargaining unit. This is seldom the case as union

elections invarably are held among members from many bargaining units.

For example, under the ILA Constitution in evidence herein, the respondent was elected International President by a Convention composed of delegates from all locals and geographical districts in which the ILA operated (Govt. Exs. 1A and 1B). The New York membership comprises only a portion of the many thousands of ILA members in the various ports in the United States, Canada, and the territories. It would have been entirely possible for the New York longshoremen, who form a single appropriate bargaining unit within the meaning of the LMRA, to have voted against respondent to a man in the union election and yet to have seen him elected by delegates from the other Ports. Such unanimous disapproval from the employees in one unit would have had no effect on respondent's ability to acquire or retain his union presidency. And, of course, in many unions, key officers are not elected at all, but are appointed to their positions.

Thus, it is clear from the logic as well as the plain language of the statute that employees are protected only in their choice of representative, that is the labor organization or individual accorded the special status defined in the Act. If the New York longshoremen had tired of the ILA, they could have selected another representative, and NLRB machinery would have been available to effectuate such choice. No protection or guaranty, however, is given to employees with respect to the election of union officers, should they choose a labor organization as their representative and it is entirely possible that such officers are desired by only a small number of employees in a given unit, or even none at all, with no opportunity for redress under the Act.

The second paragraph of Section 9(c)(1) permits an employer to file a representation petition when "one or more individuals or labor organizations have presented to

him a claim to be recognized as the representative defined in subsection (a) of this section". Again it is clear that when an individual is or claims to be a statutory representative, his status is equivalent to that of a labor organization and his individual name appears on the National Labor Relations Board ballot when a representation election is held.

In the case at bar, on the contrary, every NLRB representation proceeding involving New York longshoremen has had one or more labor organizations as the sole party or parties claiming to be the representative of the employees, and in no case has an individual claimed to occupy that status. The ILA being the collective bargaining agent and party to the contracts, and respondent being merely one of several union officers elected as such by persons who do not fall into any appropriate bargaining unit, it is plain that he does not fit the category of representative envisaged by the Act. And the exclusive quality of the representative status enjoyed by the ILA rules out any possibility of respondent too being held to possess that status.

16.

NLRA Section 9(g); 29 U. S. C. Section 159(g).—Section 9(g) deals with certain financial reports which labor organizations must file if they seek certification as the representative of employees or in any other respect to avail themselves of the benefits of the Act. This section, like many others in the statute, refers specifically to a labor organization as the representative of employees, providing in part that "no labor organization shall be eligible for certification under this section as the representative of any employees" unless certain conditions are met.

It is also noteworthy that Section 9(g) speaks of the "representative of *any* employees," thereby demonstrating that there is no statutory magic in the word "any", as the Government seems to contend in its consideration of

Section 302, and that the use of this word does not change the meaning of the noun it precedes or expand the meaning of that noun beyond what it was before.

The above summary covers all the uses of the term "representative of employees" in the amended National Labor Relations Act. Two provisions contain the word "representative" in an entirely different context not referring to a "representative of employees" at all. 29 U. S. C. Sections 152(1) ("legal representatives") and 158(b)(1) ("representatives [of an employer] for the purposes of collective bargaining"). But in each and every one of the 16 provisions of the amended NLRA in which a reference is made to a representative of employees—the only type of representative covered by Section 302 of the LMRA and specified in the indictment—what is clearly meant is the party occupying the status created and recognized by the NLRA, that of exclusive representative of a unit of employees, selected as such by the majority of employees therein. There are no exceptions; the term is used in no other way. And by reason of Section 501(3) of the Act, no other meaning can be ascribed to the same term as used in the same way in Section 302.

The use of "representative" in the remaining provisions of the LMRA is entirely consistent with its NLRA meaning. In some provisions there is merely a repetition of the NLRA language with the imposition of different penalties. LMRA Section 303(a), 29 U. S. C. Section 187(a). In other sections repeated references are made, as in the NLRA, to collective bargaining between "employers and the representatives of their employees". LMRA Section 201, 29 U. S. C. Section 171; LMRA Section 204(a), 29 U. S. C. Section 174(a). Throughout the entire Act, therefore, the use of the term "representative of employees" establishes beyond any doubt that it was never intended to apply to a person situated as respondent herein.

C. Answering Petitioner's Contentions as to the Meaning of "Representative"—Petitioner's Admissions and Concessions in Effect Establish the Correctness of the Decision Below.

1. The Government in effect concedes that each and every time the word "representative" is used in the amended NLRA with reference to a "representative of employees", it has the meaning contended for by us.[1] The force of this concession is sought to be softened by use of the word "frequently" (Pet. brief, pp. 12, 26), where "invariably" or "always" would have been the accurate expression. But the plain fact is that no claim is made in the Government brief that there is a single use of the term "representative of employees" in the NLRA which would cover union officers, and the Government fails to point to even one such instance. This alone, in view of the unequivocal language of Section 501(3), is decisive of the issue at bar.

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[1] Although the Government quotes freely from the dissenting opinion below as to the desirability of prohibiting a union officer from receiving money from an employer, it is conspicuously silent on the reasoning by which the dissenting judge concludes that this particular statute achieves that result. The principal ground of the dissent below—never raised by the Government in either the trial court or the Court of Appeals and not urged by it herein—is that the definition of "labor organization" in the NLRA is sufficiently broad to include an individual. While we believe this view to be answered completely by the majority below (R. 174-175), we fail to see its relevance even if its correctness be assumed *arguendo*. For the key term to be construed is "representative" not "labor organization," and it does not advance the argument to claim that an individual may be a "representative" by being a labor organization. He may be a "representative" directly, without involved reasoning, by the simple, clear provisions of Section 2(4) of the NLRA and the substantive provisions of that Act. The question is whether this language refers to a union officer or to an individual acting as "representative" in lieu of a labor organization, and on this score the dissent furnishes no support to petitioner. We think it clear from a reading of the statute that the latter is the correct construction.

2. Petitioner argues, however, that this conceded fact is not due to the meaning of the key term but because it is always modified by "limiting" phrases such as "for the purpose of collective bargaining" or "as provided in section 9(a)". Although we fail to see the relevance of this contention, the short answer to it was given by the Court of Appeals: "That is not true" (R. 174); and the opinion goes on to cite several sections in which the word is not so modified and yet unquestionably refers only to the statutorily created exclusive bargaining representative. See NLRA Sections 1, 7, 8(b)(4)(B), 8(b)(4)(C), 8(d), 9(b), and 9(g).[2]

In its brief before this Court, petitioner apparently recognizes that its reliance on alleged "modifying phrases" is not supported by the statute, and so the claim is made that in some instances at least, the term "representative" of employees means what the Court below held it to mean, not because of modifying phrases, but because of "the context in which it is used" (Pet. brief, p. 25). At this point, we submit, petitioner has conceded our case.

For is not the "context in which it is used" in various NLRA provisions simply another way of saying "[its] meaning as when used in the National Labor Relations Act"? The latter phraseology, of course, is the language

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[2] In several instances the phrases relating to "representative" in the amended NLRA were intended as phrases of limitation, but not at all in the sense urged by petitioner herein. Under the scheme of the NLRA a "representative of employees" may become such in two ways: through voluntary recognition or through certification by the NLRB. As this Court pointed out in *American Communications Association* v. *Douds*, 339 U. S. 382 (1950), several provisions of the NLRA distinguish between certified and recognized representative in the rights conferred and liabilities imposed. Some of the phrases relied upon by petitioner were intended to make the provision in question applicable only to certified representatives. Section 302 is applicable to both certified and recognized representatives.

of Section 501(3) of the LMRA. And once it is admitted, as petitioner has done, that because of its "context" in the NLRA, "representative" means what we contend, then it has been established that this is its "meaning as when used" in the NLRA and hence the meaning which must be given to it in Section 302.

3. Petitioner relies heavily on uses of the word "representative" outside of the NLRA and in a context other than "representative of employees", the only type of "representative" referred to in Section 302 (Pet. brief, pp. 26-27). The argument apparently is that whatever may be the meaning of "representative" in the NLRA, it has a broader meaning in other Titles of the LMRA. This contention ignores completely the express terms of Section 501(3). Moreover, in these other Titles, as in the NLRA, there is no variation of the meaning of "representative" with respect to a "representative of employees."

What the Government fails to note is that under the Taft-Hartley Act, as under the original Wagner Act, "representatives of employees" are unique. Nothing in this law or any other purports to tell employers, the public, business, industry or finance (to take petitioner's own examples) how they shall choose their representatives in their economic dealings with others; nowhere are these other groups combined by law into appropriate units with elaborate mechanics prescribed for the election of "representatives" under Government auspices, and with the "representative" chosen by the majority being the exclusive "representative", for the minority who would have preferred another as well as for the majority.

And yet this is precisely what the Act does in the case of employees, and only employees. To argue, therefore, that the word "representative" when used with reference to employers, the public, or other groups in the community does not have the meaning for which we contend is to miss

the entire point of the Act and what it accomplishes. Whatever may be the meaning of the word with reference to these other groups, Section 302 deals only with a "representative of employees" and here the meaning is clear, precise and uniform throughout the statute. It does not cover a union official when the Union itself is the employee representative.

Indeed, we fail to see how the single word "representative" could be construed to cover both the Union and its various officials, to say nothing of other unspecified categories of persons, as contended by petitioner. The Union and its officials are entirely separate, both practically and juridically. The Union, when acting as statutory "representative", is the agency directly responsible to the employees and subject to their control through the provisions of the amended National Labor Relations Act. The officers are the agents of the Union, appointed or elected. They are responsible and accountable to their principal, the Union, and not to the employees of any given bargaining unit. The respective rights, powers, duties, and obligations of the principal and the agent differ completely. Each is specifically referred to and separately described in the LMRA. Thus, the Union is described by a specific term, "labor organization", its officers are referred to in the statute as "officers" [NLRA Section 9(h)] or "agents" [NLRA Section 8(b), LMRA Section 301(b)] and when it is desired to extend the statutory coverage to both the Union and its officials, the clear phrase "a labor organization or its agents" is used [NLRA Section 8(b)]. A single word, "representative", undefined except in terms of its NLRA meaning, cannot conceivably be held to encompass both types of entity, and the statute makes no attempt to do so.

4. The error in seeking to have the one word cover the two types of entity and the irreconcilability of that attempt with the concept of exclusivity contained in the NLRA appears clearly in the facts of this case. The Government's

own statement of facts (Pet. brief, pp. 6-8) discloses that the only functions sought to be ascribed to respondent, as President of the ILA, were those performed in the collective bargaining process. This, of course, is the function of most union officers. And in line with the Government's theory that a "representative of employees" is anyone who "acts on behalf of the employees" (Pet. brief, p. 24), it was sought to be proved that respondent acted for employees in collective bargaining, or, to use the statutory word, that he was a "representative" of the employees in collective bargaining. But the statute clearly provides (NLRA Section 9) that the "representative" referred to therein is the *exclusive* representative for purposes of collective bargaining, meaning, of course, that there can be no other. And, as we have shown, in this case the exclusive representative, within the meaning of the Act, was not respondent at all but the ILA and its subdivisions.

5. Petitioner errs when it states (footnote 3, p. 18), that in labor-management parlance, the term "employee representative" commonly refers to a union officer; and neither of the sources cited by petitioner uses this term. In the years since the enactment of the original NLRA, "employee representative" or "representative of employees" has acquired in labor-management parlance the same meaning that the term possesses in this most familiar of all labor relations statutes. And the same may be said for the parlance of this Court. For example:

> "In No. 10, the constitutional issue was raised by a suit to restrain the Board from holding a representation election in a bargaining unit in which appellant *union* was the *employee representative*, without permitting its name to appear on the ballot. . . ." (Emphasis supplied.)
>
> *American Communications Assn.* v. *Douds*, 339 U. S. 382, 386 (1950).

> The *union was thereupon*, [after election] *certified as the exclusive bargaining representative of the em-*

ployees in question in respect to wages, hours, and other conditions of employment.

* * *

"Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the *representatives of a unit, usually a union*, result in an accord as to terms which will govern hiring and work and pay in that unit." (Emphasis supplied.)

J. I. Case Co. v. *NLRB*, 321 U. S. 332, 333, 334-335 (1944).

6. There being no support in the statutory language for petitioner's position, the Government brief resorts to a naked appeal to this Court to perform a purely legislative function. Petitioner argues that it was the object of Congress to preserve the legitimate rights of employers, employees and labor organizations, that the receipt of money by a union officer from an employer, whatever the motive, purpose or circumstance, is an evil, and hence that the "goal will best be reached by reading the term 'representative'" as the Government argues (Pet. brief, pp. 9, 15-16). We think the inappropriateness of such an argument addressed to this tribunal so clear as to require no further elaboration. See *Anderson* v. *Wilson*, 289 U. S. 20, 27 (1933); *Matter of Doyle*, 257 N. Y. 244, 268 (1931).

D. The Language and Meaning of Section 302 of the LMRA Show That Under That Section, as Under Every Other Provision of the Act, Respondent Was Not a Representative of Employees.

By virtue of the definition of "representative" contained in Section 501 of the LMRA, it is mandatory to construe that term in Section 302 as having the same meaning that it possesses in the National Labor Relations Act. Apart from this, however, Section 302 itself shows

that the term "representative", under the facts of this case, refers solely to the ILA and not to respondent or any other union officer.

Paragraphs (a) and (b) of Section 302 prohibit outright the payment or delivery of money or other thing of value from an employer to any representative of his employees who are employed in an industry affecting commerce. Such payment and its acceptance are made crimes on the part of both employer and employee representative.

It should be observed that Congress in these paragraphs did use the term "representative", which had acquired a definite well-established meaning in the years that the original NLRA was on the books and which was used in precisely the same way throughout the LMRA of 1947. Had it so desired, Congress could have selected another word which would clearly have encompassed union officers. If Section 302 were intended to cover persons in defendant's position, Congress could for example have readily used the term "agent of a labor organization". The word "agent" is well-known to the law, it would clearly cover union officers, and it is the very term used in this same Labor Management Relations Act when union officers were intended to be covered by a statutory provision. Thus in Section 8(b) of the NLRA (Section 158(b) of the Code), first added in 1947, the Legislature has prohibited certain unfair labor practices by "a labor organization or its agents". When Congress intended sweeping coverage of union officers, or coverage of both a union and its officers, it knew well how to use appropriate and definite language to accomplish its purpose. Its failure to use the same type of terminology in Section 302 and its use instead of a word uniformly employed to designate a specific statutory status must be viewed as purposeful, and the word so used must be given its accurate statutory meaning.

Petitioner relies heavily upon the use of the word "any" before "representative" and before "employees" in para-

graphs (a) and (b) as supporting its interpretation of the statute. We believe that word does no such thing. Whatever may be the scope of "any", and granting it the widest possible application, that word cannot grammatically or logically transform someone into a "representative" who would not be one otherwise. A man must first be a "representative of employees" before he can be covered by the term "any representative" of employees. And as indicated above in connection with NLRA Section 9(g), the word "any" is occasionally used in the NLRA as part of the key phrase without in the slightest changing its meaning with respect to the issue herein involved.

For two distinct reasons the word "any" is wholly appropriate and in no way indicates an attempt to vary the meaning of the term "representative" from that given to it throughout the remainder of the statute.

In the first place the employees of a single employer may be divided into several appropriate bargaining units. These may be on a craft, plant or any other basis recognized by the statute. Each such unit may be represented by a different representative. To proscribe a transfer of money to any of those representatives, it was quite appropriate to use the word "any".

Taking the facts of this case, the evidence discloses that Daniels & Kennedy, Inc., and J. Arthur Kennedy & Son, Inc. were in the trucking, warehousing and stevedoring businesses (R. 22). Only their longshore employees were represented by the ILA. In all likelihood their trucking and warehousing employees were represented by the International Brotherhood of Teamsters and Warehousemen. Their office and clerical employees may well have been represented by an office workers union. Naturally Congress intended to prohibit payments to any of these representatives, and used language appropriate for this purpose.

For yet another reason the use of the word "any" is fitting. Again considering the facts of this case, the parties

to the collective bargaining agreements, on behalf of the employees, are the ILA and its affiliated local unions (R. 23). The ILA and such affiliated locals are, as set forth in the stipulation of facts, the recognized collective bargaining agents and bound by the terms of the collective agreements (R. 23). To prohibit transfers of money to any of these labor organizations, that is the ILA or its affiliated local unions parties to these agreements, the word "any" preceding "representative" is entirely natural and proper. It in no wise signifies an intent to apply the word "representative" to union officers.

Following the general prohibitions in Paragraphs (a) and (b) of Section 302, Paragraph (c) sets forth certain exceptions thereto. The first exception relates to money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer as compensation for services rendered. Such an exception is obviously necessary in those instances where an individual is a representative within the meaning of the statute, a situation which as we have shown above, is legally possible and which occasionally occurs. If no such exception were in the statute, it would be impossible for a unit of employees to select as their bargaining representative one of the workers in the group, thereby denying to them the full, unlimited choice of representative which is guaranteed under the NLRA.

The second exception in Section 302(c) relates to the payment of money in satisfaction of a judgment of a court or award of an arbitrator. Here too the necessity for such an exception is obvious. It should be borne in mind that the suits and arbitrator's awards contemplated by the exception are not between union officers and employers but rather between the employer and the Union itself. Indeed, under the great majority of collective bargaining agreements, including those in evidence herein, arbitration machinery may be invoked only by the employer or the

Union, that is, the parties to the agreement, and not by any individual. Of course, in a unit where an individual is the representative of employees and hence the party to the collective bargaining agreements, that individual may be a party to arbitration proceedings or court suits. That such is not the case in the instant situation is plain.

The third exception relates to the sale or purchase of an article or commodity in the regular course of business. Certainly there is no reason why a labor organization or an individual, in those instances where an individual is the employee representative, should not be permitted to purchase the products of an employer on the same terms and conditions as any other customer. In such a situation something of value, namely the product sold, passes from the employer to the employee representative, so that the exception is necessary in order for the statute to exempt from its general prohibition a transaction which should obviously be permissible. Nor is this a merely theoretical matter, since many labor unions purchase the products of the employers of their members. Petitioner is in error, therefore, when it asserts that under the statutory construction adopted below, this exception can have reference only to a representative who is an individual (Pet. brief, p. 21).

The fourth exception concerns the check-off of union dues, provided, however, that a written assignment has been made by the employee. One of the principal objects of Section 302 was to prohibit check-offs established through collective agreement between union and employer without the consent of any of the individual employees. This exception, it is important to note, is applicable in terms only to payments to a labor organization. It can have no application to any payments to an individual, be he a representative, as the term is used in the statute, or merely a union officer. For as the statutory language shows, a check-off relates to membership dues in an organization. No individual representative receives or is entitled to any such

dues, so that no occasion could ever arise for exception number (4) to come into play except in those instances where the employee representative is a labor organization. Consequently this provision is further evidence, if such be needed, that the word "representative", as used in Section 302, does not refer to union officers, but is to be given its true and proper statutory meaning in accordance with the mandate in Section 501 of the LMRA.

Indeed, if it were intended by the general prohibitions in paragraphs (a) and (b) of Section 302 to prohibit the delivery of money to a union officer or agent rather than to the Union itself, then Congress would have failed to accomplish the very purpose which it had in mind, that is, the prohibition of check-off payments to labor organizations without the consent of the employees.

The fifth and most important exception deals with welfare and pension funds. It provides that the general prohibition shall be "inapplicable with respect to money or other thing of value paid to a trust fund established by such representative" when certain conditions are met. Among the most important of these conditions are joint administration of the fund, a specific, detailed, written agreement and an impartial umpire to resolve disputes.

These requirements are all met in the welfare and pension plans of the longshore industry. In fact the Agreement and Declaration of Trust of the welfare plan in evidence refers to Section 302 in terms, and provides that the trust created is intended to qualify under the conditions set forth in that section (Def. Ex. C).

It cannot be emphasized too strongly that the statutory language refers to a "trust fund established by such representative". The "such representative" referred to obviously is the same "representative" covered by paragraphs (a) and (b). In the case at bar, as in every case where a labor organization is the bargaining agent and negotiates

and executes collective bargaining agreements, the welfare or pension trust fund has been established by the Union and administered jointly by the Union and the employers. Specifically, in the longshore industry the ILA has established both a welfare and a pension fund, and such funds are administered through trustees appointed by the ILA and the New York Shipping Association.

The identity of the parties by whom the welfare and pension trust funds are "established", to use the statutory word, appears plainly from the language of the respective plans. Indeed both the Welfare and Pension Plans covering longshoremen in the Port of New York do use the statutory language, each of them providing at its very outset that the Plan and the trust fund created thereunder are "established" by the employers and "the International Longshoremen's Association" (Def. Exs. A and C).

Although conceding that the construction adopted below gives consistent meaning to each of the five exceptions, petitioner argues at length that Congress would not have deemed it worthwhile to make an exception applicable only to representatives who are individuals, apparently on the theory that an insubstantial number of persons would be affected (Pet. brief, pp. 10-11, 19-22). The lack of merit in this argument is revealed not only in Section 302 itself, but through the LMRA as a whole.

In the first place this argument, which really applies only to the first exception in Section 302(c), ignores the expressed statutory policy to give employees their free and unrestricted choice of representatives. In view of the absolute ban on *all* receipts in subdivisions (a) and (b) of Section 302, the exceptions to this ban had to be equally all-inclusive and cover *all* types of exception which Congress thought appropriate to make available to either type of representative, irrespective of the relative number of individuals affected. If this were not done, the area of em-

ployee choice would be limited, and the policy of the NLRA would in some measure at least be unintentionally thwarted by Section 302. Since Congress had no such desire and since individuals were to be included within this area of employee selection, by the express terms of the NLRA, exceptions applicable to such individuals were a necessary part of Section 302(c).

Petitioner also ignores the well-known historical fact that the proponents of Section 302, Senators Byrd, Ball, Jenner, etc., were not overly sympathetic to the cause of labor organizations or desirous that the number or strength of trade unions be increased. An individual or group of individuals was commonly put forward to employees as an alternative to labor organizations by those who wished to discourage strong collective action by employees through bona fide unions. The proponents of Section 302 and their supporters would never have drafted a provision which made it more difficult for employees to choose an individual as their representative.

But perhaps the simplest answer to the Government's contention is found in the other provisions of the Taft-Hartley Act. For how can it be said that the subject of individual representatives was too trivial to be included in Section 302 when the same subject is clearly treated in other sections of the same Act? (See NLRA Sections 8(d) and 9(c)). And since in these NLRA sections the references to an individual clearly encompass only one who is a representative in the statutory sense, it seems futile to argue that a similar reference in Section 302 could not have been and was not intended to cover the same type of relationship.

Petitioner likewise errs when it asserts (Pet. brief, footnote 5, p. 24) that Section 302(c)(5) uses the term "representative of employees" in relation to the administrators of the trust fund. Here, as everywhere else in the Act, the

key phrase refers to the bargaining representative in the statutory sense.

A careful reading of the statutory language in question, Section 302(c)(5)(B) discloses that this provision refers throughout, except in one clause, not to the day-by-day administration of the trust fund by the trustees, but to the initial agreement between the employer and the bargaining representative establishing such funds. This applies to the optional designation of neutral persons, to the requirement that "such agreement provides" for an impartial umpire or the appointment of an umpire by the district court, and to the requirement that such agreement "shall also contain provisions for an annual audit".

Only at one point is reference made in Section 302 (c)(5)(B) to the administration of the fund by the trustees. And there the term used to describe such administrators appointed by the Union and the employers is not "representative" but "employer and employee groups". Hence the word "representative" is given its true and consistent statutory meaning and the union-appointed trustees are described by another term entirely, "employee group".

It is plain that the word "representative" in Section 302 cannot refer to union officials rather than the Union itself. For if Congress had intended "representative" to have such meaning it would have failed entirely to accomplish its admitted purpose of regulating welfare funds. In the case of such welfare funds, employer contributions or payments are made not to any union official or agent but either to the Union itself or to the trust fund. In the case of those funds which existed prior to the enactment of the Labor Management Relations Act of 1947 and which were administered solely by the Union, the very type of fund Congress wished to curb, all employer payments were made directly to the Union and not to any individual officer.

It certainly cannot be presumed that Congress in enacting this section would have used language in such a way as to fail completely to accomplish its primary aim.

Nor, as we have shown above, can the single word "representative" be construed to cover both the Union and its various officials, to say nothing of various other unspecified categories of persons. The two types of entity are legally and factually distinct, with different responsibilities, entities, duties, and powers, both under the LMRA and the provisions of general law.

The remaining provisions of Section 302 serve further to confirm the correctness of the decision below and refute the Government's contention that Section 302 was designed to protect the "integrity" of the collective bargaining process from "corrupt" employer influences. Thus paragraph (e) grants injunctive powers to the district courts to restrain violations of Section 302 without regard to the provisions of the Clayton Act and the Norris-LaGuardia Act. The very grant of injunctive powers to the courts would seem to show that this is not in the nature of an anti-bribery or anti-extortion statute. Injunctive powers would hardly be appropriate if the transactions sought to be curbed were in fact surreptitious "pay-offs" or "shake-downs".

Moreover, the Clayton and Norris-LaGuardia Acts relate respectively to the impact of the anti-trust laws on labor organizations and the issuance of injunctions in labor disputes between employers and labor organizations. If the word "representative" in the LMRA were intended to describe union officers or "labor leaders", these other statutes would have had no applicability in the first place, and there would have been no need to include in Section 302 a paragraph specifically providing that they shall have no effect on the remedial relief allowable under that section.

Paragraph (f) states that Section 302 shall not apply to any contract in force on the date of the enactment of the statute until approximately one year thereafter or until the expiration of such contract, whichever first occurs. Again if this statute were in fact intended to prevent bribes, "sell-outs" or corrupt influences as the Government contends, it would have been absurd for Congress to permit such an illicit transaction to be made without penalty for a full year after the enactment of the statute simply because it had been agreed to prior to such enactment.

There had been no case, civil or criminal, decided under Section 302 between the time of its enactment in 1947 and the trial of this case in December, 1954, in which the term "representative" was applied to an officer of a union or in which a payment to such an officer by an employer was at issue. The bulk of litigation arising under this section has dealt with the legality of certain welfare funds pursuant to exception (5) of paragraph (c); in other cases the issue turned on the legitimacy of making check-off payments to a labor organization under exception (4); and one case concerned the propriety of a payment by an employer to a union under exception (2).

In every case the payment made or contemplated to be made was to a labor organization acting as the "representative of employees" within the meaning of the LMRA, or to a trust fund established by such representative and the employer. In seven long years no prosecutor attempted to indict a labor official or an employer for gifts made from one to the other, although it is commonly known that thousands upon thousands of such gifts are made each year.

From these facts it is certainly fair to conclude that prosecutors have never believed Section 302 to apply to union officials. To adopt the interpretation advocated by petitioner would mean twisting the meaning of the term

"representative" to such an extent as to make its use in Section 302 totally alien to the language and intent of the section itself and wholly irreconcilable with the statutory definition of "representative" and with every single other use of that same term in the remaining portions of the statute.

POINT II

The legislative history of Section 302 of the LMRA shows that Congress in enacting the statute intended the word "representative" to have the same meaning as in the amended NLRA, that is, the party selected as such by the majority of employees of a bargaining unit, and did not intend the word to apply to union officers.

A. The Purpose of Section 302 Was to Limit the Area of Collective Bargaining and More Particularly to Regulate Union Welfare and Pension Funds.

The legislative history of Section 302 makes it amply clear that at the time of the enactment of the statute, the only time that counts, no Congressional intent existed to prohibit payments to union officers or agents.

The basic purpose of the section was to limit the area of collective bargaining by barring all payments to a union treasury unless made in accordance with the exceptions enumerated and under the specific conditions there set forth. Through this section Congress sought to eliminate the growing practice of employee representatives in using their tremendous bargaining power to force employers to make huge payments to them, usually for welfare or pension funds. These funds, however, were administered solely by the Union with little or no restriction, and Congress feared that, rather than being expended for the benefit of the employees who earned them, they were being accumulated as union "slush funds" or "war chests".

At the time of the statute's enactment the great industrial example of unrestricted employer contributions to employee representatives was in the field of welfare and pension funds. Accordingly, practically all the Committee reports and Congressional debates concerning Section 302, running into the hundreds of pages, are devoted to a consideration of union welfare funds, primarily those of the United Mine Workers, whether or not they should be regulated, and if so, the standards to be applied. This applies to the Taft-Hartley bill itself and to the Case bill, considered in the previous session of Congress, which contained a similar proposal. Throughout the Congressional debates and the Committee reports, the section is referred to as a provision for the regulation of welfare funds. To a much lesser extent there is evidenced a Congressional desire to limit check-off payments to labor organizations. There is no evidence of any purpose to "eradicate improper employer influences from the collective bargaining process", the object attributed to Congress by petitioner (Pet. brief, p. 16).

While Congress at the time had in mind principally welfare and pension funds, Section 302 was intended to prohibit all similar unrestricted funds and to eliminate their establishment as a permissible subject of collective bargaining between employer and employee representative. Thus, to take a more recent industrial phenomenon, a guaranteed annual wage fund could not be established, in the light of Section 302, by employer payments to the employees' representative and the establishment of a fund held and administered solely by that representative.[3] In this respect Section 302

[3] This does not mean that we contend, as the dissenting judge below erroneously thought, that Section 302 "covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union" (R. 184). The section prohibits payments to a true statutory "representative" whenever made, and whatever the circumstances (subject to the five exceptions and to the word "willfully" in so far as criminal liability is concerned).

is a further manifestation of the policy expressed by the 1947 Congress in other sections of Taft-Hartley, as for example, Section 8(a)(3) of the amended NLRA which limits the area of permissible collective bargaining by outlawing certain types of union security agreement.

This general purpose to limit collective bargaining in a certain field, with particular attention to welfare funds as the principal current example of the abuse Congress thought to exist, explains the structure of Section 302. With this purpose in mind, naturally Congress cast the first two subdivisions of the section in terms of a ban on *all* receipts of money by an employee representative from an employer and then proceeded to carve out the permissible exceptions. This structure fully supports the statutory construction adopted by the Court of Appeals, and not that of the Government, as petitioner urges in its brief (footnote 13, p. 28; footnote 18, p. 41).

Section 302 had its origin in the Case bill which was before the 79th Congress in 1946. Never considered in committee, it was introduced as an amendment to that bill by Senator Byrd of West Virginia and entitled "Restrictions on Payments to Labor Organizations." Its introduction was prompted by the demand of the United Mine Workers Union for an employer contribution to a union-administered welfare fund of 10¢ per ton of coal. This Fund was administered by the UMW alone with no restrictions on its discretion. Congress feared that it would constitute a multi-million dollar union war chest instead of being used for the benefit of the employees, and the Byrd amendment was accordingly adopted and incorporated in the Case bill. It never became law by reason of Congress' failure to override President Truman's veto of that bill.

A similar provision was introduced in the 80th Congress as part of a comprehensive labor bill (S. 55). No such provision was included in the labor bill presented to the

House at the outset of the 80th Congress, and an attempt to introduce a provision similar to Section 302 failed in the House. 93 Cong. Rec. 3562-70 (1947). Accordingly the entire legislative history on this provision is in effect limited to the proceedings in the Senate and in the Joint Conference Committee of the House and Senate.

The Senate Labor Committee in reporting out the proposed labor bill did not include any provision similar to Section 302. Five members of that Committee, headed by Messrs. Taft and Joseph H. Ball, filed a supplemental report to the Report of the Senate Labor Committee in which, among other things, they favored an amendment to the bill numbered "Section 302" and entitled "Restrictions on Payments to Employee Representatives". (See Rep. #105 on S. 1126, Supp. Views, p. 52.)

It is noteworthy that the section of the Supplemental Report dealing with this proposed amendment is entitled "Limitation on Abuse of Welfare Funds" and except for two sentences on the subject of check-offs, the discussion therein deals entirely with welfare funds and their regulation. These five Senators recognized the origin of their proposal in the Byrd amendment and recognized further that the purpose of the Byrd amendment was to regulate welfare funds. Thus in their Supplemental Report the five Senators described their proposal as "an amendment reinserting in the bill a provision regarding so-called welfare funds similar to the section in the Case bill approved by the Senate."

On May 7, 1947 Senator Ball introduced this amendment on the floor of the Senate. 93 Cong. Rec. 4677 (1947). The amendment was substantially similar to Section 302 of the present law except for one crucial provision.

This key provision concerns directly the meaning of "representative", the very term in issue herein. For Section 302 as originally introduced in Congress had its own

separate definition of this word which was quite different from the meaning given to that term in the NLRA. Paragraph (g) of the section as introduced by Senator Ball read as follows:

> "For the purposes of this section, the term 'representative' means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

This separate definition of representative was also a part of the Byrd amendment adopted by the previous Congress, and certain remarks of individual Senators must be read with this crucial factor in mind.

The bill presented to the Senate for consideration had one other provision that is of the greatest importance in this case. Section 501(3) of the bill, as reported out of committee, read as follows:

> "(3) The terms 'commerce', 'labor disputes', 'employer', 'employee', 'labor organization', 'person', and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

It will be noted that, unlike the final version of this section in the law, the committee bill did not include in Section 501(3) the word "representative" as one of those whose meaning was to be the same as when used in the NLRA. This section was amended by the Joint Conference Committee and not before then. "Representative" was, in fact, the only word added to this section of definitions prior to its eventual passage.

This then insofar as relevant was the version of the bill before the Senate throughout the debates on Section 302.

After the passage of the two widely differing labor bills by the House and Senate, the final version of the LMRA was worked out by the Joint Conference Committee. At this point two changes, highly significant to the issues at bar, were made in the Senate bill, which, as we have seen, included the substance of what is now Section 302.

In the first place the separate definition of "representative" was eliminated from Section 302. And simultaneously the Joint Conference Committee added the word "representative" to the list of terms defined in Section 501(3) of the LMRA as having the same meaning throughout the LMRA as when used in the amended NLRA.

Although an explanation of these changes was not given in the report of the Joint Conference Committee, the reason why they were made seems quite clear from the course of the Senate debates. For on May 8, 1947, at page 4748 of 93 Cong. Rec., Senator Irving Ives of New York made the following remarks:

> "In the first place, I should like to point to subsection (b), on page 2. I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague. Certainly anything of a legitimate character should not be limited by such a provision."

Senator Ives, it should be recalled, was one of the principal spokesmen of the majority Republican Party in the field of labor relations. A former Dean of the Cornell School of Labor and Industrial Relations, his voice was listened to with respect and his views were accorded great weight. Significantly, he was one of the Senate members of the Joint Conference Committee, he voted against Section

302 in its original form and, he voted for the LMRA when it came up for final passage.

It is entirely likely that the changes in the original bill were prompted by Senator Ives' remarks in which he stated that the statutory language was too broad and might well proscribe legitimate gifts such as Christmas and birthday presents.

In any event, the action taken by Congress, as distinct from the statements made by a very few individual Senators, emphasized the unimportance of the isolated statements, primarily concerned with the Case bill, which are cited in the Government's brief. For we are concerned here solely with the meaning of a single term and this term was defined in a wholly different manner at the time of the Senatorial statements referred to than in its final version, under which respondent has been indicted. It may well have been that the statements by these few Senators were accurate with respect to the version of the bill then under consideration. However, they simply do not apply to the finished product after the two important changes had been made by the Joint Conference Committee.

Moreover, even these isolated statements cannot be considered reliable indicia of Congressional intent, as they are clearly the product of partisan salesmanship in the course of debate. Contrasted with these few remarks, dozens of instances might be cited where Senators referred to the provisions in question as being exclusively designed to regulate welfare funds or as covering only payments to unions or labor organizations. *E.g.*, 92 Cong. Rec. 4891 (Byrd), 4893 (Byrd), 4894 (Byrd), 5340 (Taft), 5345 (Ball), 5428 (Taft) (1946); 93 Cong. Rec. 4678 (Byrd), 4746-7 (Taft) (1947). Several statements to the same effect were made by Senator Ball, a sponsor of this section, after he had introduced it as an amendment to the Taft-Hartley bill. 93 Cong. Rec. 4678, 5015, A2252 (1947). See quota-

tions from Congressional Record in the opinion below (R. 178).

Indeed, as the Court of Appeals opinion so convincingly demonstrates (R. 179), the lone mention of a "union representative" in the debates on Taft-Hartley—Senator Taft's remark quoted in the Government brief, footnote 19, page 43 (93 Cong. Rec. 4746)—does not refer at all to the type of situation involved herein. Senator Taft spoke of a shakedown by a "union representative". In context, however, it is quite clear that what he had in mind was the practice allegedly engaged in by some unions of bargaining for their own benefit rather than for the benefit of the employees represented by them. These unions would exert great pressure to obtain employer contributions to an uncontrolled welfare fund and it was thought by some that such funds would then be used as a union slush or strike fund. The grant of such employer contributions would be accepted by the union as the price for a collective bargaining agreement in lieu of other benefits which should have been received by the workers. This fear was expressed clearly by Senator Ball, in introducing Section 302, when he said:

> "Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. . . . I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure." [93 Cong. Rec. 4678 (1947).]

Other Senatorial references to union officials in the debates on the Case bill likewise show in context that the Senators did not have in mind union officers as payees or recipients of money. Such officials, whether identified by name or not, were simply used as a colloquial synonym

for the union itself. Personification of a union through the name of one of its officers is common practice, particularly where the union is led by a powerful official. Thus in dealing with demands made by the United Mine Workers, Senators time and again referred to John L. Lewis although it was quite plain that John L. Lewis was not demanding anything for himself but was merely acting for the Mine Workers in demanding that certain payments be made to that union. Similarly James Petrillo was referred to in the Senate debates when the party intended was not Petrillo the individual but the Musicians Union of which he was president. 92 Cong. Rec. 4891-93 (1946). This type of loose use of language, which appears throughout the Senate debates, certainly cannot be held to govern the construction of a penal statute under which a man has been indicted, convicted and sentenced to a prison term.

Since the Government brief relies so heavily on remarks made during the debates on the Byrd amendment to the Case bill, and since there are, indeed, no statements made in the consideration of the Taft-Hartley bill itself which clearly indicate an intent to cover union officers as recipients of money, it is important to realize that the Byrd amendment and the Case bill as a whole were not intended to tie in closely with the National Labor Relations Act or to constitute a revision of that Act as was the Taft-Hartley law. The Case bill was entitled the "Federal Mediation Act of 1946", and it would by no means follow that the meaning of the word "representative" in such a statute would be the same as in the National Labor Relations Act. This would be so even if the Byrd amendment had no separate definition of "representative". The inclusion of such a definition is explicit, incontrovertible proof that a meaning at variance with that in the NLRA was intended.

The significant thing about the debates on the Byrd Amendment is not the meaning ascribed to the word "representative" in that proposal—since the ultimate use of

that term in the LMRA differed completely in both language and context from its Byrd Amendment meaning—but the fact that the key differences between the separate definition of "representative" contained in the Byrd Amendment and the NLRA meaning of the same word did not go unrecognized. At the very height of the debates, Senator Wayne Morse of Oregon, one of the leading labor relations experts in Congress,[4] delivered a scholarly address on the Byrd Amendment. In the course of his address he referred to the separate definition of "representative", quoted it to his colleagues, and then went on to say:

> "Mr. President, that is a very interesting definition. It becomes apparent, then, that the whole principle of majority rule as set forth by the National Labor Relations Act would be undermined by the Byrd Amendment, because, under it the labor organization with which the employer may deal in establishing a trust fund need represent only two or more of his employees. The existence of a majority representative, certified by the National Labor Relations Board or otherwise validly designated by the employees, would be irrelevant. Apparently, an employer could set up a company union which would participate in the administration of the trust fund. It would be possible, also, for the employer to deal with several organizations, even despite the existence of a majority representative. Moreover, it seems clear that if the protections of the National Labor Relations Act are to be abrogated, an employer could effectively defeat unionization of his employees by the device of setting up a liberal trust fund at the very time that attempts at organization were begun—a stipulation now forbidden under the National Labor Relations Act.

[4] Senator Morse was for 13 years Dean and Professor of Law at the University of Oregon Law School; he was a former Pacific Coast Arbitrator for the U. S. Department of Labor, Alternate Public Member of the National Defense Mediation Board, and member of the National War Labor Board.

> "I submit, Mr. President, that this analysis of the meaning of the word 'representative' as used in the pending amendment is but another reason for proceeding in our consideration of this amendment through committee hearings and affording opportunities for experts, as well as other qualified witnesses, to testify. A report should then be submitted to the Senate showing what would be the effect of the Byrd amendment on the labor relations of this country" (92 Cong. Rec. 5474 (1946)).

Three things are plain from this statement: first, that Senator Morse recognized the obvious fact that the word "representative" in the NLRA meant the exclusive representative chosen as such by a majority of employees in a unit; second, that he thought there were grave dangers in having the Byrd Amendment meaning of that term vary from that of the NLRA; and third, that he understood that if the meaning of "representative" in the Byrd Amendment were brought into conformity with the meaning in the NLRA, then the applicability of that term would be restricted to the exclusive majority representative of a bargaining unit in the same sense that the word is used throughout the NLRA. This he apparently thought to be desirable and this is what was eventually done in the Taft-Hartley law.

One more thing is plain. If the Government's argument herein were adopted, all the consequences described by Senator Morse, as well as others not enumerated, would result. An employer would be empowered by Section 302 not only to establish an employees welfare fund with a minority union but with any officer or agent of a union, either majority or minority. Check-offs could be negotiated and effectuated between employer and minority union. The potentialities of employer influence in legitimate union affairs would be incalculable; the opportunities to influence the employees' choice among competing unions and rival union officers or to shape the course of collective bargain-

ing would be such as to gladden the heart of any imaginative, anti-union employer.

Indeed, if it were desired to introduce subtle, corrupting and improper influences in the collective bargaining process—the very influences which petitioner proclaims itself so anxious to prevent—nothing would do the job better than adoption of petitioner's own argument:

> That the "representative of employees" referred to in the original draft of Section 302 was not an employee "representative" within the meaning of the NLRA is as true with respect to the Taft-Hartley bill as it was in the case of the Byrd Amendment. The separate definition of representative, which Section 302 contained when first introduced by Senator Ball, while far from a model of clarity, might well have applied to union officers. The phrase in that particular paragraph that "some of the officers are representatives" lends support to this view.
>
> Certain it is, as Senator Morse so clearly stated in the Byrd Amendment debates, that this proposed definition was wholly at variance with the concept of exclusive representatives in the NLRA whereby the representative chosen by a majority of employees in a unit was the exclusive representative of the entire unit. For under the proposed definition in Section 302, a "representative" would be anyone who purports to be authorized to deal with an employer on behalf of two or more employees, even though the two employees were part of a unit of 20,000 employees. The bargaining unit covered by the collective agreements in evidence herein was port-wide and included thousands of men. Under this proposed definition such a unit might have hundreds of "representatives", each speaking for two or more employees.

But we need not depend upon analysis or the statements of Senator Morse, who opposed this provision, to perceive the difference between the definition in the pro-

posed Section 302 and the meaning of the same word in the NLRA, which through Section 501(3) eventually became the meaning applicable to Section 302. For Senator Ball himself, the proposer of Section 302, pointed out this fact to his colleagues when he first introduced the section as an amendment. In explaining paragraph (g) of the proposal, he said:

> "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act" (93 Cong. Rec. 4678).

In view of these facts it is apparent that any statement made by any Senator in the course of debate has no bearing on the resolution of the issue at bar. For however similar the remainder of Section 302 of the law may be to Section 302 of the bill debated by the Senate the meaning and definition of the word "representative" was most definitely changed prior to passage of the Act. There were no relevant debates on Section 302 after the Conference Committee reported, and under no circumstances can a statement concerning the bill before the Senate made prior to the Conference Report be used to provide the meaning of that word in the final Act of Congress.

In evaluating the industrial effect of the decision below and the significance to the statutory purpose of the changes made by the Joint Conference Committee for the Taft-Hartley bill, it must be recognized that the welfare funds which Congress sought to regulate resulted from direct payments by employers to labor organizations. They were then frequently used by these unions for general welfare purposes without being in trust and without any real limitation on their expenditure. It was felt by many that they were too often used as a "war chest" for union ends rather than the benefit of the workers, and also that discrimination was practiced among the workers in allocating their distribution. See 93 Cong. Rec. 4746-7 (Taft) (1947).

These welfare funds, however, were never paid to union officers but only to the union itself and then only when the union was the "representative of employees" within the meaning of the NLRA. That this was recognized by Congress appears clearly from the legislative record. For example, in the supplemental report by the five members of the Senate Labor Committee in which Section 302 was first considered (Senate Report No. 105, on S. 1126, Supplemental Views, p. 52), the following appears:

> "The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers that a tax of 10 cents a ton on coal be paid *to the Mine Workers Union* for indiscriminate use for so-called welfare purposes." (Emphasis supplied.)

The only sense in which Section 302 was intended to curb the power of labor leaders was through the prohibition of the unrestricted receipt by unions of these moneys. In other words, John L. Lewis and other union officials were to be affected, not directly as payees, recipients, or donees of any moneys or things of value, but indirectly as agents or officers of labor organizations which were themselves such payees. If the money could not be received by the union without the presence of safeguards, then obviously the union officers could not permit it to be spent except in accordance with those same safeguards. The unrestricted payments were thus to be cut off at the source.[5]

But this scheme and purpose was in no wise affected by the action of the Joint Conference Committee in narrowing the meaning of "representative" or by the holding of

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[5] This is plainly the meaning of Senator Ball's remark quoted on pages 39-40 of petitioner's brief. The Senator was referring to the diversion by union leaders of moneys received without restriction by their unions from employers, and not to the officers themselves receiving moneys from employers.

the Court of Appeals herein. Since union officers were themselves never directly payees or recipients of welfare or check-off funds, there was no loss to the statutory effectiveness in eliminating them from any coverage that may have existed under the original proposal. And since the true statutory representatives are still covered, the payments sought to be curbed and eliminated at their source have been so curbed. The basic purpose of Section 302 has been upheld; no prohibition on legitimate matters has been imposed; serious constitutional questions have been eliminated; and the term "representative" has been given a uniform and effective meaning throughout the entire Act.

B. Answering Petitioner's Contentions as to Legislative History—Petitioner Misconceives the Purpose of Section 302 and Misreads the Congressional Development of That Section.

1. Petitioner points out that initially the Byrd Amendment to the Case bill contained no separate definition of "representative" and argues that the definition was inserted to narrow the statutory scope while its elimination by the Joint Conference Committee for the Taft-Hartley bill was designed to restore its original broad meaning. Petitioner completely ignores the fact that the Joint Conference Committee also took one other important step with respect to the word "representative" by inserting it in the section of definitions, Section 501(3). Neither the Byrd Amendment nor the Case bill, of course, had any section analogous to Section 501(3), and hence to claim that the Byrd Amendment meaning was restored by the Joint Conference Committee simply reads out of the LMRA one of its key provisions.

Moreover, no reason exists either in legislative history or elsewhere, why the Joint Conference Committee should have wanted to broaden the meaning of "representative", particularly at a time when the bill's supporters knew that they would have to muster sufficient votes to overcome the

anticipated Presidential veto.[6] Nor do we see how the separate definition of "representative" could, as a matter of statutory analysis, be considered narrower in scope than the eventual definition in Section 501(3), in view of the substantive provisions of the amended NLRA.

On the contrary, however, there was every reason why the Conference Committee, in order to obtain Congressional support for the bill, should narrow the scope of "representative" and thereby eliminate doubts which had actually been expressed on the Senate floor (such as those of Senator Ives and Senator Pepper, 93 Cong. Rec. 4748 and Senator Morse, 92 Cong. Rec. 5474). In other words, if Senator Byrd inserted the definition of "representative" in his Amendment to allay fears and narrow the statutory scope, so the Conference Committee for the Taft-Hartley bill substituted for this definition the still narrower meaning given the term in the NLRA, and for exactly the same reason.

2. Petitioner also relies upon the comment of the Joint Conference Committee that Section 302 of the Senate bill "was adopted with minor clarifying changes". We think it clear that the characterization of a change as either minor or major made in a report cannot be regarded as indicative, and certainly not as decisive, of legislative intent. We are not dealing here with a committee's exposition of the meaning of a legislative provision, but simply with someone's evaluation of the importance of a change which was undeniably made.

In stressing so strongly the Senatorial remarks made before the elimination of the separate definition and in arguing that the change made little difference, petitioner

[6] It can hardly be supposed that the Joint Conference Committee was seeking to reintroduce all the uncertainties as to employees' baseball teams, picnics and the like, which had aroused so much opposition to Senator Byrd's original proposal and which are referred to in petitioner's brief, page 33.

would ignore what was *done* simply because of what was said, not as to the substance of the action taken, but as to its magnitude. In ascribing virtually the same meaning to the word "representative", both before and after the Joint Conference Committee changes, the Government totally ignores not only the comparative language of the bill and the statute but also the express words of Section 302's proposer, Senator Ball, who announced to the Senate that the meaning of the word "representative" in his proposal was different from that in the NLRA. In the light of this legislative history and the definition of "representative" in the law as enacted, there can be no doubt that the change was a matter of substance and not merely of language.

Actually, however, the change made was indeed minor, viewed in relation to the general scheme and purpose of Section 302, and the characterization in the Joint Conference Committee report was not inaccurate. For as we have shown, the intent of this provision was to limit the area of collective bargaining and particularly to regulate welfare funds and check-offs. The fact that the Joint Conference Committee changes are crucial to this particular case does not mean that they are not "minor" with respect to the section as a whole. Any change in a statute is bound to be important in a particular case. That this is the first indictment against a union officer in the seven years that the Taft-Hartley Act has been on the statute books is ample evidence that coverage of union officers was never its real purpose and that the elimination of such coverage from the statutory scope was unimportant in effectuating Congressional intent.

To show the error in relying on the characterization contained in the Joint Conference Committee report, it is necessary only to turn to paragraph (g) of Section 302. This paragraph was added for the first time by the Joint Conference Committee and substantially enlarges the rights of employee representatives by restricting the applicability

of the statute. It too is covered by the phrase in the Committee report "minor clarifying changes", and again this is accurate viewing the section as a whole. Nevertheless, in the case of a trust fund which comes within this paragraph, the addition thereof by the Joint Conference Committee makes the difference between lawful conduct and the commission of a crime; to the parties involved, this "minor" change means that they cannot be imprisoned for acts that would otherwise have left them clearly liable to just that fate.

3. The Government brief devotes a great deal of attention (pp. 13, 36-41) to a proposal in the House bill, H. R. 3020, which would have made it an unfair labor practice for an employer to bribe any person in a position of trust in a labor organization. This proposal which was abandoned in the joint conference, is labeled by petitioner "the origin" of Section 302(a) and (b) and is treated throughout the Government brief as though it were intended to accomplish the same purpose as Section 302.

Petitioner's argument is completely untenable both as a matter of statutory language and legislative history. Petitioner has overlooked the fact that Section 302 itself, in substantially the same form as it was introduced in the Senate by Mr. Ball, was also introduced in the House as an amendment to the Hartley bill but failed of adoption there. 93 Cong. Rec. 3562-70 (1947). In this abortive effort lies the House legislative history of Section 302 and not in the wholly unrelated provision relied upon by petitioner.

The purpose of the House proposal was entirely different from that of Section 302. Its object, as appears clearly from House Report No. 245 on H. R. 3020, was to remedy certain alleged abuses by the NLRB in its administration of the Wagner Act. It was felt by the House that Section 8(2), the "company union" provision of the original NLRA,

was being administered to discriminate against independent, unaffiliated unions.

Accordingly, the object of the proposed Section 8(a)(2), (A), (B) and (C) of the House bill was to prescribe more definite standards of employer interference and thus circumscribe the Board's power. Unless there was evidence of the three types of conduct expressly prohibited, namely preventing the union from determining policy out of the employer's presence, bribery of a union official, and financial assistance, the Board was to be powerless to brand a union as employer dominated or to enjoin the employer from his alleged interference.

The Senate left this Section unchanged but adopted two other provisions to accomplish the same result: NLRA Sections 9(c)(2) and 10(c). In view of these two amendments, the House acceded to the elimination of Section 8(a)(2)(A), (B) and (C) of its bill. See House Conference Report No. 510 on H. R. 3020, p. 41.

In short, this heavily-relied upon House proposal sheds no light whatever upon the origin or purpose of Section 302.[7] Its language however is of significance in two re-

[7] Upon the argument at the close of the trial in the District Court, the Judge referred to this very proposal and asked the parties to argue its significance in their briefs. After thorough examination of the legislative history, the United States Attorney concluded that the House proposal had no bearing upon this case. In the text of his brief to the District Court he stated at page 35: "this Bill [H. R. 3020] contained no provision equivalent to [Code] Section 186 [LMRA Sec. 302]"; and in a footnote to that sentence, he effectively dismissed the House provision in the following terms: "Section 8(a)(2)(B)(C) made it an 'unfair labor practice' for an employer to dominate a labor organization by giving a reward to a person of trust in a union for the purpose of perverting his judgment, by assisting any labor organization by means of the check-off or trust fund. These provisions were not applicable to a union representative, carried no criminal sanction, and were eventually eliminated from the Labor-Management Relations Act."

spects. When it was desired to include a union official within the coverage of a statutory provision, the word "representative" was not used, but rather a clearly applicable phrase like "any person in a position of trust in such [labor] organization." And when it was intended to prevent corruption of the collective bargaining process and the betrayal of the interests of a union and its members, the bill expressly required an evil purpose and corrupt conduct as an element of the charge. Such language is wholly appropriate and necessary for the type of legislation which petitioner claims Section 302 to be. Its absence from Section 302 shows that something else entirely was intended.

4. The Government's misplaced reliance on this House proposal illustrates the essential fallacy of its entire view of Section 302. Petitioner asserts that the purpose of this section is "to eradicate improper employer influences from the collective bargaining process" (Pet. brief, p. 16) and hence to strengthen the bargaining power of unions by punishing their faithless employees. Employers, under the Government's interpretation, were to be curbed in their use of economic power to render unions subservient to them in their mutual dealings.

As the Government urges in its brief, this is a laudable aim with which few will disagree.[8] The only difficulty is that it was not the aim of Congress which was dealing with another subject matter entirely. This will be clear upon a moment's reflection as to the ultimate purpose of the Taft-Hartley law and the philosophy underlying it. The whole purpose of Taft-Hartley was to correct an imbalance thought to exist between the economic power of labor and

[8] As indicated herein, however, the section, as interpreted by the Government, goes far beyond this, with consequences both unjust in their application and destructive of the policy of the LMRA. Had Congress really been seeking to accomplish the aim attributed to it by petitioner, it would have used far more appropriate language, similar to that in the abandoned House proposal considered above.

management and the restrictions placed upon the two groups by law. The Wagner Act had proceeded on the assumption that the superior economic power of management was thwarting the legitimate aspirations of employees, and therefore that Act conferred certain rights upon employees and their representatives while curbing some of the types of conduct theretofore engaged in by employers. No correlative restrictions were placed upon unions. By 1947 Congress felt that the pendulum had swung the other way, that the unrestricted economic power of unions now had to be curbed, and that the restrictions on employers should be loosened to enable them to compete with their employees' representatives on more even terms. [See, e. g., the "free speech" amendment to the NLRA, Section 8(c).]

Obviously the construction of Section 302 adopted by the Court below furthers the paramount purpose of Congress. And just as obviously the Government's contention is wholly inconsistent with that purpose. The intent attributed to the 1947 Congress by petitioner might have been appropriate if directed toward the legislature which adopted the Wagner Act. But it misconceives entirely the approach, philosophy and objectives of the Taft-Hartley Congress and would have the 1947 legislators seeking to further an end—the strengthening of the bargaining power of unions—which it was their express desire to discourage.[9]

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[9] The Government's contention that the proposed amendment to Section 8(2) in H. R. 3020 was intended to add something new to the Act and thereby provide additional protection against improper employer influences further illustrates petitioner's basic misconception. That proposal would have added nothing to the Wagner Act. Under Section 8(2) of the original NLRA, employer bribes of union officials constituted the most blatant type of employer interference, compelling the Board to find an unfair labor practice and grant appropriate relief. The House proposal, as indicated above, was intended to take away from the Board's power to eradicate improper employer influences, and the reference to employer bribes merely represented one of the very few situations in which the House was willing to leave the NLRB with a residue of its former power.

5. Petitioner also contends that under the construction adopted below, loopholes may be found in Section 302 (Pet. brief, pp. 12, 22-23). Even if this were so, we think it plain that the existence of loopholes would be no justification for construing a statute in a manner contrary to both its plain language and legislative history, or for introducing into labor relations the chaos which would flow from such an interpretation.

But as a matter of construction, it is questionable whether the examples posed by petitioner are loopholes at all. The union-appointed administrators of a welfare fund are the agents of the Union selected as such by the Union and occupying their positions at the will of the Union. Their receipts of money are made not in their private capacities but as agents of the Union and pursuant to express agreement and direction of their principal. The same may be said as to a parent union which is designated as the recipient of welfare funds by an employee representative in its collective agreement. Whether in such circumstances, the principle of *respondeat superior* and the doctrine of law referred to in petitioner's brief, footnote 14, p. 29, come into play is a matter to be decided in an appropriate case. Suffice it to say there is no evidence that this was the situation herein, and petitioner makes no such claim.

Moreover, even under petitioner's interpretation of the statute, the suggested loopholes, if they do exist, would not be eliminated. Although a parent union might be considered a representative by petitioner, welfare payments could easily be made not to the parent but to another subdivision of the same union which has no relationship to the employees of the employer in question. Or they might be made to a person or agency independent of the Union under such circumstances that the recipient could never itself be considered a representative of employees. In short, petitioner's attempt radically to rewrite the LMRA

would do no more than eliminate one or two of the many evasory contrivances that might be imagined in theory.

In fact and in practice, however, no such evasion either has occurred, or will occur. Membership pressure, tax consequences and internal union considerations are only a few of the many practical reasons why petitioner's suggestions of possible evasion of welfare fund restrictions are more illusory than real, assuming for the purposes of argument only that such could be accomplished legally under Section 302.

In point of fact, as a result of the enactment of Section 302 in its present form welfare funds and check-offs have been regulated in the manner desired by Congress. All such funds in industries affecting interstate commerce are in trust, reduced to a written agreement and administered jointly by employers and unions. The rights of the individual workers are specifically protected by the trust indenture. This has been done even in industries with the most powerful unions, including the United Mine Workers, the particular object of this provision. See *Van Horn* v. *Lewis*, 79 F. Supp. 541 (D.C. 1948). Similarly check-offs are no longer in effect in industries affecting interstate commerce except upon written permission of the employer affected, and then only for the period of time prescribed by the statute. The purposes of Section 302 have been fully accomplished, and without any attempt to bring union officers within its coverage.

POINT III

Strong reasons of public policy and imperative regard for the maintenance of our federal constitutional system require the construction adopted by the Court below.

If Section 302 of the Taft-Hartley Law were construed as applicable to the facts of this case, grave constitutional questions arise under the Tenth Amendment, and problems affecting state and federal relations in the field of criminal law enforcement, already serious enough, become almost insoluble.

It is elementary that when Congress enacts legislation in a field within its competence it thereby "occupies the field" and ousts the states from all jurisdiction over the subject matter, unless a contrary Congressional intent appears. *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942); *Garner* v. *Teamsters*, 346 U. S. 485, 498-499 (1953).

In the case of the Taft-Hartley Law there is no indication of any intent to permit state action in this field. See *Garner* case, *supra*. Unlike federal statutes such as those which forbid larceny, embezzlement and the wrecking of trains, this act has no provision forbidding a defendant from being tried in both the federal and state courts under two valid, applicable statutes. See 18 U. S. C. Section 659-660, 1992.

The lack of such a provision in a statute is strong evidence that Congress meant to occupy the field to the complete exclusion of the states. See Boudin, *The Place of the Anti-Racketeering Act in Our Constitutional-Legal System*, 28 Cornell Law Quarterly, 261 (1943). If, therefore, Section 302 of the Taft-Hartley Law is interpreted as applying to union officials, then the states have been ousted completely from their traditional jurisdiction over

extortion and bribery committed by any such official. For the Taft-Hartley Law, as interpreted by petitioner, would certainly be broad enough to cover these traditional state crimes and hence would serve to exclude the states entirely from this field. An intent to accomplish such a drastic result is not lightly to be attributed to Congress.

Nor can this problem be solved by assuming that the federal law does not oust the states of jurisdiction and that the states may act concurrently with the Federal Government in prosecuting extortion by and bribery of union officials. Such a holding would only raise another serious problem, that of former jeopardy. Where state and federal governments have each enacted criminal statutes making the same act an offense under the laws of each, conviction or acquittal under state law does not bar a later federal prosecution. *Hebert* v. *Louisiana*, 272 U. S. 312 (1926); *United States* v. *Lanza*, 260 U. S. 377 (1922).

Under such circumstances, a defendant may not only be put in jeopardy twice, but may actually be punished twice, for the same act. But although the federal law does not provide that such double prosecution and punishment constitutes "former jeopardy" in the technical sense, because of the rule that in such a case two offenses have been committed, one under state and one under federal law, the federal courts have recognized that the mere possibility of such double prosecution is abhorrent to our sense of justice. Accordingly, the presence of that possibility has been used as the basis for the strict construction of federal statutes creating "offenses which duplicate or build upon state law". *Jerome* v. *United States*, 318 U. S. 101, 105 (1943).

The statutory interpretation advanced herein by the Government would not only create chaos and confusion in the field of federal-state relations, it would create equally serious problems with respect to the federal penal law

itself. For if the statute involved herein covers all receipts of money by a union official from an employer, other than those falling within the specific exceptions in Section 302, a substantial area of overlapping exists between this section and the Hobbs "Anti-Racketeering Act," 18 U. S. C. Section 1951.

Virtually all violations of the Hobbs Act by a union official or anyone else construed to be a "representative of employees" would, under the Government's theory herein, constitute in and of themselves violations of Section 302 of the Taft-Hartley Law. The exact same act would constitute two separate, substantive federal crimes, each punishable by fine and imprisonment. Conviction or acquittal upon the same evidence under either statute would not bar subsequent prosecution and punishment under the other. This Court should not so construe Section 302 as to give rise to such a monstrous possibility.

POINT IV

Grave Constitutional questions arise under petitioner's interpretation of Section 302. Accepted principles of statutory construction require that these questions be avoided through affirmance of the decision below.

It is well-settled doctrine that where one construction of a statute creates grave Constitutional questions, the Court will, if possible, construe the statute to avoid such questions. *Ashwander* v. *TVA*, 297 U. S. 288 (1936). In the instant case, we believe only one construction to be tenable, the one adopted in the decision below; but should this Court have doubts on the matter, we submit that the Constitutional questions raised by petitioner's view of the statute are so serious as to compel affirmance of the Court of Appeals decision.

Here we shall outline, but not brief, the Constitutional questions that would arise assuming that the statute were construed as petitioner urges. We do not at this time argue, as we did in the Court below, that Section 302 should now be declared invalid in the event the Court decides against us on the statutory issue. We are presenting the Constitutional questions in summary form solely as they bear upon the construction to be given the statute.[10]

A. Section 302 of the LMRA, as Construed by Petitioner, Would Be Unconstitutional in That it Would Be So Vague and Indefinite That Persons Could Not Reasonably Tell Whether or Not They Were Subject to its Terms.

It is well-settled that for a statute to meet the requirements of due process, particularly one prescribing criminal sanctions, it must be sufficiently clear that ordinary, reasonable men can understand its meaning and know whether or not they or the acts which they intend to commit will fall

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[10] We recognize that a respondent is permitted to raise issues other than those specified in the petition for certiorari, in support of the judgment below, *Langnes* v. *Green*, 282 U. S. 531, 535-539 (1931). We also recognize, however, that it is the better practice, particularly when Constitutional issues are involved, to give this Court the benefit of a Court of Appeals opinion, full briefing and oral argument. *United States* v. *Ballard*, 322 U. S. 78, 88 (1944). Since this case has been placed on the summary calendar, there would be no opportunity to argue orally any other issue than the meaning of "representative of employees". Accordingly, we have not raised herein the two Constitutional points presented below, our contention that the word "willfully" in Section 302(d) requires an evil or corrupt purpose under the doctrine of *Morissette* v. *United States*, 342 U. S. 246 (1952), and our further contention that the evidence does not sustain the conviction under any view of the statute. All of these arguments we deem meritorious and none are to be considered abandoned.

within its terms. *Connally* v. *General Construction Co.*, 269 U. S. 385 (1926); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *Winters* v. *N. Y.*, 333 U. S. 507 (1948); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *Champlin Refining Co.* v. *Corp. Comm.*, 286 U. S. 210, 242-43 (1932); *Smith* v. *Cahoon*, 283 U. S. 553 (1931).

In the case at bar the term "representative", unless accorded the construction urged by us, is far too vague and uncertain to permit Section 302 to stand. Unlike such a term as "agent", which is also used in the LMRA, it has neither a "well-settled common law meaning" nor a technical or other special meaning", the two standards prescribed by this Court in the *Connally* case as minimum essentials for validity. It is similar to the words "gang" and "gangster" which proved the downfall of the statute in the *Lanzetta* case, "locality" and "current rate of wages" in the *Connally* case, and "unjust and unreasonable rate" in the *Cohen Grocery* case, the Court finding that these terms had numerous and various meanings which could not be derived from the common law and which could not be ascertained with any certainty. The mere fact that these terms were all defined in the dictionary, and in some cases in the legal dictionaries, did not save them; so too with the word "representative".

In the language of the *Winters* opinion, a fatal vagueness results "from uncertainty in regard to persons within the scope of the act".

One of the principal sources of this uncertainty is the LMRA itself. "Representative" is defined in Section 501(3) in terms of its NLRA meaning. As shown above, throughout the NLRA, and in other provisions of the LMRA as well, the word has a meaning which does not extend to respondent. To a labor union official in respondent's position, familiar with the NLRA and its administration, this

definition would naturally refer not to himself but to the Union with which he is associated. To construe Section 302 in an entirely different manner can hardly be said to give fair notice to this defendant or to anyone else. And such a construction of one section of an Act where the same terminology has a different meaning in a score of other provisions of the same Act, fails by a wide margin to furnish the specificity required of a penal statute.

Particularly is this so when over a period of seven years no indictment prior to this one has been found against any labor leader, although the receipt of gifts and gratuities by such leaders from employers is widespread and well known to all informed persons. From this fact respondent and every other union official could only deduce that the law enforcement officials of this nation were likewise of the opinion that Section 302 applied only to representatives of employees, within the statutory meaning of that term, and not to any union official.

Only a few examples will suffice to show the utter lack of certainty as to the scope of the term "representative" under the construction urged by the Government herein. Would it, for example, be restricted to an elected officer or would it cover an appointed officer as well? Would it apply to a salaried employee? Would it apply to such an employee performing merely ministerial tasks? Just what degree of responsibility or discretion is required to make such an employee a representative? Would it apply to such officers as Sergeants-at-Arms or Marshall, whose sole functions are to act in certain capacities at membership meetings? Would it apply to a president of a union who does nothing more than preside at meetings, as is frequently the case? Would the term cover only those actively engaged in the collective bargaining process? If so, would a full-time paid and elected officer of high position in the Union, such as a treasurer, be excluded on the ground that

he had no functions to perform with respect to collective bargaining? And suppose the officer or employee had nothing to do with collective bargaining but in other respects acted as agent for the Union in dealings with employers. Would the term apply to a shop steward or other similar person whose duties are to act on behalf of a small number of men on a particular job, the employees in question being only a small fraction of an appropriate bargaining unit within the meaning of the NLRA?

We have considered above merely the indefiniteness of Section 302, if construed as petitioner urges, as it affects persons connected with a majority union in a bargaining unit. But what about others? Would a minority union, barred by the NLRA from bargaining collectively with an employer, be covered? Such unions exist in thousands of industrial units throughout the nation. Are the officers, employees and agents of a minority union within these criminal sanctions? If so, what functions or responsibilities determine their coverage, since none of them, by law, can participate in collective bargaining with the employer concerned, particularly if the unit has a majority union.

And what of those persons who have not yet managed to organize a union in a particular unit but are seeking to do so? Until they succeed, they may make no demands upon the employer, although they may have made many adherents. No answer appears in the statute as to whether this penal provision applies to them or not.

Assume the employees organized a baseball team and the employer contributed uniforms to that team. This subject was discussed by various Senators in the debates on both the Byrd Amendment and the Taft-Hartley bill, and would seem to be within the literal language of the section, as construed by the Government. See also 92 Cong. Rec. 5499 (1946). Or to take one of the multitudes of individuals and firms which aid employees and service

their unions, would an insurance agent advising a union be considered a "representative of employees" so that he or his company would be criminally liable if they accepted a fee from the employer on an unrelated matter? The same situation exists with a host of others who are not officially connected with a union but who might, in the prosecution's view, be held to "represent" employees.

Under the original definition of "representative" which was deleted from Section 302 by the Joint Conference Committee, none of this last group would have been covered, as they do not deal with employees on the collective bargaining level. But if the elimination of this definition was designed to broaden coverage as claimed by petitioner, then "representative" may be argued to extend to all of these groups and individuals. The only thing that may be said with clarity is that the statute provides no answers to any of these questions.

As another example, would the term "representative" apply to an accountant or an attorney acting on behalf of a labor organization? It need only be recalled that the common verb employed to describe the relationship of attorney and client is "represent", that is the attorney "represents" his client. If this be the meaning then the statute makes it criminal for such an attorney to receive a fee from any employer with whom the Union deals, even though the matter for which the fee was earned had nothing whatever to do with labor relations and was in no way inconsistent with the interests of the Union. Many lawyers would be astonished to learn that they are subject to fine and imprisonment for professional acts openly engaged in and wholly lacking in any element of impropriety. In fact, it is not uncommon for unions and employers to be joint parties to litigation on the same side, with the same attorney appearing on behalf of both and being compensated by both.

Under the same theory an attorney retained by a union would be prohibited from receiving from an employer a contribution for a charity or other worthy cause in which the attorney is interested. Certainly Congress could never have intended this, and yet under the theory of the Government here, such may very well be the result.

We have shown only a few ways in which "representative" under petitioner's theory herein wholly fails to apprise persons of whether or not they are subject to the criminal sanctions of Section 302 of the Taft-Hartley Act. Here we have an unprecedented criminal statute which, according to petitioner, makes the mere acceptance of money a crime without any wrongful or criminal intent. In addition the particular status which subjects a person to the coverage of the statute is made so uncertain and defined through use of such a vague and ambiguous term, with no special lay or legal meaning, that the ordinary person in the labor movement has no way of knowing whether or not he may be convicted of a crime under its terms.

Even the trial judge herein, when first confronted with Section 302 at the trial, thought it so vague and "inadequately drawn" as to have no fixed, ascertainable meaning (R. 145-146). Only after lengthy consideration based on voluminous briefs did he change his mind, induced, we believe, by an incorrect view of the law relating to indefinite statutes. The true test, however, is what the statute would mean to the ordinary citizen upon reading it, without recourse to legal briefs, legislative history, or the like. It is far more appropriate to look to the initial reaction of the trial judge upon reading the statute, rather than his ultimate judicial opinion, in determining whether the constitutional standards are met. His initial instinct did not play him false; the section is indeed too vague and inadequate to be permitted to stand. If a trained judge and lawyer could not, by reading the statute, feel that it sets forth intelligible rules of conduct, how should an ordinary

labor leader, or any other citizen, be deemed to have been given the degree of notice constitutionally required in the case of a new crime?

The legal principles applicable to statutes invalid because of vagueness establish beyond doubt that when a statute suffers from this fatal infirmity it is void in toto and may not be used to convict anyone, whatever may be the facts of the particular case. Thus in *United States* v. *Petrillo*, 332 U. S. 1, 5-6 (1947), this Court said:

> "And the motion to dismiss on the ground of vagueness and indefiniteness squarely raises the question of whether the section invoked in the indictment is void *in toto*, barring all further actions under it, in this and every other case. *Cf. United States* v. *Thompson*, 251 U. S. 407, 412."

A statute attacked on grounds of vagueness is judged "on its face" (*United States* v. *Harriss*, 347 U. S. 612, 617 (1954)), and specification of the details of an alleged offense showing that a particular defendant should have known himself subject to the statutory provision will not cure the defect in the statute itself. *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939).

Naturally, in passing upon the specificity of a statute, the Court will not strike it down because marginal cases might pose questions of doubt. In such event, the marginal cases are left to be resolved as a matter of statutory construction, if and when they arise, with the defendant entitled to the benefit of the rule that penal statutes of questionable applicability are to be construed most favorably to the accused.

This rule, however, could not save the statute herein. For under the construction of "representative" urged by petitioner, there is no general class of cases at which the statute is clearly directed, and if there were, such class does not fall "plainly within . . . [the statute's] terms".

United States v. *Harriss*, 347 U. S. 612, 618 (1954). Rather, the language used "may be as much a trap for the innocent as the ancient laws of Caligula" (*United States* v. *Cardiff*, 344 U. S. 174, 176 (1952)).

Moreover, in our case the doubtful situations are far from marginal. They go to the very heart of the statute and the various categories of persons it might be held to cover. The examples given by us above—and many more might be put—cover the majority of groups and categories of persons associated with labor and labor organizations. No guidance is given by the statute, under the construction advocated by petitioner, as to which of them are covered and which are not or as to what standards bring them within or without the statutory ambit. A statute so loose and indefinite could not stand and, under the established rule, would have to be struck down in its entirety. Moreover, respondent was entitled to rely on the definition in Section 501(3), and any attempt to prosecute him on a construction of the term "representative" at variance with its NLRA meaning fails to give him the notice to which he is constitutionally entitled. Such an attempt also renders the definition in Section 501(3) itself invalid by reason of vagueness. These insurmountable constitutional objections, we submit, argue eloquently for the correctness of the decision below.

B. As Construed By Petitioner, Section 302 Would Be Invalid, Both on its Face and as Applied to this Respondent, for the Further Reason That it is Beyond the Power of Congress to Enact.

We do not, of course, question the power of Congress to regulate employers and representatives of employees, in so far as their acts affect interstate or foreign commerce. But no warrant or authority exists for a Congressional enactment such as this, if sought to be applied to labor union officials in the absence of any evidence of corrupt or evil intent.

The vice of this statute, as so construed, is that it would prohibit a certain act solely on the basis of the particular status or office occupied by the two parties involved. Nowhere in the statute, however, is any link required between the status of the parties and the act to be prohibited. An act, innocent in itself, would be made criminal if a certain relationship exists, even though there is no connection between the two, and the doing of the act is not prompted by or in any way related to the parties' status or position. Thus, viewing the record herein most favorably to the Government, all that has been shown is the fact of status and nothing more.

That an individual is engaged in an industry affecting interstate commerce, either as an employer or a labor union official, naturally subjects him to some extent to Congressional regulation. But such regulation must relate to his acts as an employer or union official. The fact that he occupies such a position or status does not subject his every act to Federal regulation. Only those acts may be regulated by the Federal Government that bear a reasonable and substantial relationship to interstate commerce or the particular part played by the individual in interstate commerce.

In other words, where Congress seeks to regulate union officials because they hold such office, this being an essential element of the crime, it must deal with acts of theirs in that particular capacity. For example, an anti-bribery statute might have at least some conceivable relation to interstate commerce in that it would require an intent to influence the acts of a labor union official in his capacity as such official. This, of course, is the typical form of bribery statute when it is sought to curb the bribery of a union official.

We have discovered no statute, State or Federal which makes the mere delivery or receipt of money criminal upon

the existence of a certain relationship or status held by two private citizens. An intent to influence action is always made an essential element of the crime.

An examination of Chapter XI of Title 18, U. S. Code, shows how alien the statute herein is to the general body of federal penal law dealing with graft, bribery, gratuities or the like. In the first place, these statutes, like the Hatch Act and similar enactments, deal with Government officers, employees, contractors, revenue officers, customs officials, bank examiners and the like. Statutes of this sort have been sustained solely on the basis of the "power of Congress over the conduct of officers and employees of the Government . . . while they retain their office or employment." *United States* v. *Wurzbach*, 280 U. S. 396, 398-99 (1930). As this Court held in *American Communications Assn.* v. *Douds*, 339 U. S. 382 (1950):

> "We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become government agencies or may be regulated as such" (p. 402).

Moreover, even the statutes in Title 18 customarily require that a particular intent or purpose accompany the receipt of money by a government employee before such receipt is made criminal.

That no jurisdiction has ever attempted to make criminal the acceptance of money by a private citizen absent any wrongful intent is eloquent evidence that such has never been considered within the permissible scope of governmental powers. Moreover, the states, with their broad, general police powers have far more leeway in this respect than Congress which must act within its delegated powers.

Again, a few examples will serve to illustrate the utter absurdity of Section 302, as construed by the Government herein, and its total lack of relation to interstate commerce or any burden or obstruction to such commerce.

Taking the simplest case, Section 302 would make criminal a gift from an employer to a union official without any corrupt intent and simply because they were old friends. It would subject a union official, sick in the hospital, to imprisonment if he accepted flowers or candy sent by an employer. It would prohibit a union official from soliciting and receiving funds from an employer on behalf of a church, a charity, a fraternal order or the like, or as a part of a fight which he conducts against Communism or subversion in the labor movement. A defense that a union president received money from an employer for this purpose would be wholly irrelevant under the statute so construed. Similarly this law would prohibit a union official in his capacity as a citizen from soliciting and accepting political contributions from an employer—a situation far from unusual today where union officers are actively interested and engaged in political activities.

Under Section 302, a union or union official operating a journal, yearbook or other publication would be guilty of a crime for accepting a complimentary advertisement from an employer. Yet this Court may take judicial notice of the fact that there are thousands of such yearbooks and journals throughout the nation which do solicit and accept complimentary advertisements from employers. All of the examples cited above are not merely culled from the imagination, but occur hundreds if not thousands of times each year in virtually every state and federal district of the country.

To take one further example, unusual but far from impossible, if a husband were an employer of labor and his wife an official of a labor organization representing such employees, then it would be illegal for the husband to give his wife money to purchase the family groceries, to pay the rent or for any other personal, family purpose. Fine and imprisonment would be the penalty in such case, irre-

spective of how clear it might be that no corrupt intent existed.

These examples not only show the far-flung and absurd consequences of construing Section 302 so as to make it applicable to a union official, but also the complete lack of constitutional authority or power for any such exactment. Plainly, none of the above examples or any of a multitude of others which unquestionably exist bears any relation to interstate commerce or a burden on interstate commerce. Nor do they bear any relation to any subject matter within the legislative power of Congress.

It is entirely possible, of course, that a particular payment of money from an employer to a union official may be with the intent to influence his actions and may be related to and a burden upon interstate commerce. Under Section 302, however, as construed by petitioner, a delivery of money is equally proscribed even though made for a purely personal, private, social purpose, and as a result of an entirely different relationship than the one set forth in the statute. For this statute is so drafted that if two persons have not only the relationship prescribed, that is employer and union official, but also a social, personal, political, organizational, family or other relationship as well, then the mere existence of the prescribed relationship will cause acts committed as part of the other relationship to be criminal. This Congress may not lawfully do.

Where the language of a federal statute purports to deal with matters beyond the jurisdiction or power of Congress and covers acts which Congress may not validly prohibit, then the entire statute is invalid and void. This is so even though the statute also regulates by the same language acts clearly within Congressional jurisdiction. The courts will not assume the legislative function of "amending" the statute so that it will be limited to matters which Con-

gress could validly prohibit. *United States* v. *Reese*, 92 U. S. 214 (1875); *Trade-Mark Cases*, 100 U. S. 82 (1879); *James* v. *Bowman*, 190 U. S. 127 (1903); *Smith* v. *Cahoun*, 283 U .S. 553 (1931).

As this Court held in the *Reese* case, persons subject to statutory language beyond the power of a legislature to enact need not depend upon the self-restraint of prosecutors or the sifting process of the courts to cut the statute down to proper and lawful proportions. Such a statute is totally invalid and void. In our case, there is not even any evidence of corrupt intent, effect on interstate commerce, or any other factor which would give rise to Congressional power to act. A statute construed so as to reach the facts of this case would be well beyond the limits of federal legislative jurisdiction.

CONCLUSION

It is therefore respectfully submitted that the decision of the Court below should be affirmed.

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January, 1956.

ADDENDUM

Pertinent statutory provisions from LMRA, subchapter II, referred to hereinbelow first by NLRA section number and then by section number in 29 U. S. Code:

1

NLRA Section 1

Section 151. . . . It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of *representatives* of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

2

NLRA Section 2

Section 152. . . . (4) The term "*representatives*" includes any individual or labor organization.

3

NLRA Section 7

Section 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through *representatives* of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . .

NLRA Section 8(a)

Section 158(a). It shall be an unfair labor practice for an employer—

4

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 158(a) of this title as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the *representative* of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 159(f)-(h) of this title, . . .

5

(5) to refuse to bargain collectively with the *representatives* of his employees, subject to the provisions of section 159(a) of this title.

NLRA Section 8(b)

Section 158(b). It shall be an unfair labor practice for a labor organization or its agents—

6

(3) to refuse to bargain collectively with an employer, provided it is the *representative* of his employees subject to the provisions of section 159(a) of this title;

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

7

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the *representative* of his employees unless such labor organization has been certified as the *representative* of such employees under the provisions of section 159 of this title;

8

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the *representative* of his employees if another labor organization has been certified as the *representative* of such employees under the provisions of section 159 of this title;

9

(D) forcing or requiring any employer to assign particular work to employees in a particular labor

organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining *representative* for employees performing such work;

10

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a *representative* of such employees whom such employer is required to recognize under this subchapter;

11

NLRA Section 8(d)

Section 158(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the *representative* of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modifica-

tion sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification; . . .

12

NLRA Section 8(d)

Section 158(d) . . . The duties imposed upon employers, employees, and labor organizations by paragraphs (2) (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

13

NLRA Section 9(a)

Section 159(a) Exclusive *Representatives;* Employees' Adjustment of Grievances Directly with Employer

(a) *Representatives* designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive *representatives* of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at

any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining *representative*, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining *representative* has been given opportunity to be present at such adjustment.

14

NLRA Section 9(b)

Section 159(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof; *Provided*, That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the *representative* of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

15

NLRA Section 9(c)

Section 159(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf

alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice.

16

NLRA Section 9(g)

Section 159(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f)(A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f)(B) of this section. No labor organization shall be eligible for certification under this section as the *representative* of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or consistent unit has complied with its obligation under this subsection.